STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

DEPARTMENT OF HEALTH

In the Matter of the
Proposed Adoption of Rules
of the Department of Health
Governing the Registration
of Hearing Instrument Dispensers

STATEMENT OF NEED
AND REASONABLENESS

PREFACE

This Statement of Need and Reasonableness concerns the proposed registration system for hearing instrument dispensers. It may also be necessary to occasionally discuss related regulation of hearing instrument sellers by a proposed permit system and to discuss the proposed registration system for speech language pathologists and audiologists. However, such discussion will be limited to areas where that regulation is related to the proposed registration of hearing instrument dispensers. Separate Statements of Need and Reasonableness discuss the proposed permit system for hearing instrument sellers and the proposed registration system for speech language pathologists and audiologists.

The proposed registration system will create a distinction between the meaning of the terms "hearing instrument seller" and "hearing instrument dispenser". Pursuant to the proposed registration system, a hearing instrument seller is a person who engages in hearing instrument selling, as defined in Minnesota Statutes section 153A.13, subdivision 4, but is not registered under the registration system. Hearing instrument sellers will be regulated by a proposed permit system. A hearing instrument dispenser also

engages in hearing instrument selling, as defined in Minnesota Statutes, section 153A.13, subdivision 4, but in addition, meets the qualifications of the registration system and is registered. Pursuant to the proposed registration system the term "hearing instrument dispenser" also refers to a natural person using the title consultant, dispenser, or specialist in conjunction with either "hearing instrument" or "hearing aid". Throughout this Statement of Need and Reasonableness, the term "hearing instrument seller" will be used to refer to people who sell hearing instruments but are not registered. If a person is not yet registered or was registered but is no longer registered, the person will be referred to as a hearing instrument seller. The term "hearing instrument dispenser" will be used to refer to people who sell hearing instruments and are registered.

BACKGROUND

Minnesota regulation of hearing instrument sales and sellers began in 1973. Prior to that year the sellers of hearing instruments were not specifically regulated in Minnesota. Minnesota Statutes, sections 145.43, 145.44, and 145.45 (Minnesota Laws 1973, Chapter 383) provided the first means of regulating the hearing instrument selling industry in the State. Minnesota Statutes, section 145.43 defined hearing aids and prohibited the sale of a hearing instrument without a written prescription. It also stated that the seller could not also be the prescriber. Minnesota Statutes, section 145.44 listed medical conditions of the ear which, if identified by a seller,

prevented that seller from selling an aid before a licensed doctor or audiologist was consulted. The statute also included a waiver provision for those under 60 years of age who could exempt themselves from the provisions of section 145.43 if they signed a waiver form. Minnesota Statutes, section 145.45 provided the penalties for violations of the preceding sections. Any person who violated sections 145.43 to 145.45 was guilty of a misdemeanor.

In 1976 the federal government began to regulate this area with the adoption of the "Medical Device Amendments of 1976" (P.L. 94-295, section 2; 90 Stat. 574; 21 U.S.C. 360K). These amendments preempted any state law that differed from the federal law. Minnesota Statutes, sections 145.43, 145.44, and 145.45 were, in fact, different from the federal laws and therefore were preempted. The Minnesota Attorney General unsuccessfully applied for exemption from this preemption pursuant to 21 C.F.R. sections 808.01 - 808.35 and by federal rule in 1980 this petition was denied. Although the federal law preempted sections 145.43, 145.44, and 145.45, these statutes were not repealed until 1984. Along with the repeal of these sections, the legislature enacted section 145.43 which provides for a 30-day written money-back guarantee for any hearing instrument sold.

In 1985 Minnesota Statutes, chapter 153A was enacted (Minnesota Laws 1985, Chapter 290). Chapter 153A authorized the Commissioner of Commerce to regulate hearing instrument sellers through licensure. This chapter regulated all aspects of licensing including exemptions, prohibited acts, examinations, qualifications, reciprocity, bonding, advertising, and internships. However, this chapter was not to be effective until 12 months after completion of a

study required by Minnesota Laws 1985, Chapter 290, section 13 (hereinafter Section 13). Section 13 stated, in part:

> The commissioner of health shall reconsider the application of speech language pathologists and audiologists for credentialing. The reconsideration must be conducted according to section 214.13 and must be conducted before considering any application for credentialing received after July 1, 1984. The commissioner of health shall include a study of hearing instrument dispensing by physicians, audiologists, and hearing instrument dispensers in connection with the application.

An application for credentialing by speech language pathologists and audiologists had been considered and denied in 1981 by George R. Petterson, then Commissioner of Health.

In response to the 1985 legislation, the Minnesota Hearing Aid Society submitted a formal application for licensure of hearing instrument dispensers to the Minnesota Department of Health in 1987. A public forum was held in March of 1987. The Health Department reviewed the application under the procedures and criteria dictated by Minnesota Statutes, section 214.001 et seq. The statute requires that any regulation must be imposed only for the "safety and well being of the citizens of the state." In addition to this standard there are four factors to be considered in determining whether regulation is necessary. These are as follows:

> (a) Whether the unregulated practice of an occupation may harm or endanger the health, safety and welfare of citizens of the state and whether the potential for harm is recognizable and not remote;
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> (b) Whether the practice of an occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability;
>
> (c) Whether the citizens of this state are or may be effectively protected by other means; and

(d) Whether the overall cost effectiveness and economic impact would be positive for citizens of this state.

Minnesota Statutes, section 214.001, subdivision 2. In addition to considering these factors, the statute requires that the least restrictive regulatory scheme be chosen, if any regulation is appropriate. See Minnesota Statutes, section 214.001, subdivision 3.

Based on a thorough review of the applications, the recommendations of the Human Services Occupations Advisory Council, and the recommendations of the Minnesota Department of Health staff, and after evaluating the criteria for regulation set out in Minnesota Statutes, section 214.001, subdivision 2, the Commissioner concluded that licensure of hearing instrument sellers was not necessary and that the public could be effectively protected by a combination of registration and consumer protection systems. The Determination of the Commissioner of Health, signed by Sister Mary Madonna Ashton on January 28, 1988 is attached as Attachment A. In February of 1988, the Commissioner requested that the legislature amend chapter 153A to repeal the provisions for licensure of hearing instrument sellers and enact a consumer protection package in its stead.

The Commissioner found, in her Determination (incorporated as Attachment A) that there was insufficient evidence to show actual harm to the public from improperly trained hearing instrument sellers. The evidence did not meet the statutory requirements needed for licensure which are set out in Minnesota Statutes, section 214.001. Although Department of Health staff found evidence of some actual harm to the public in sales of hearing instruments, this harm

was not due to improperly trained hearing instrument sellers, but rather to improper business practices of some sellers. Due to this information, the Commissioner decided to register hearing instrument dispensers. Registration is a less restrictive form of regulation than licensure. Licensure prohibits practice of an occupation without a license. Under a registration system, practitioners who meet minimum qualifications set by the state and register with the state are allowed to use protected titles. Registration does not prohibit practice, as licensing does, but prohibits use of protected titles by people who are not registered.

Minnesota Statutes, chapter 153A was amended in 1988 to require every person who sold a hearing instrument to obtain a permit, and to mandate the establishment of a consumer information center within the Department of Health. The Commissioner also took steps to begin development of a registration system for hearing instrument dispensers.

As a result of the above described events, proposed rules for the registration of hearing instrument dispensers were developed.

STATUTORY AUTHORITY

The Commissioner's statutory authority to adopt rules relating to the registration of hearing instrument dispensers is set forth in Minnesota Statutes, section 214.13, subdivision 1. This provision states in part:

> The commissioner shall, consistent with section 214.001, establish procedures for the identification of human services occupations not now credentialed by the state, recommend appropriate regulatory modes, and promulgate by rule standards and procedures relating to the credentialing of persons practicing in the affected occupations. ....

> If the commissioner determines that credentialing of an occupation is appropriate, the commissioner is empowered only to register the occupation.

Under this statute, the Commissioner is authorized to propose and adopt these registration rules.

ADDITIONAL REQUIREMENTS

1. Approval of the Commissioner of Finance.

Pursuant to Minnesota Statutes, section 16A.128, subdivision 1a, if a fee is required to be fixed by rule, the Commissioner of Finance must approve the fee, and the Commissioner's approval must be in the statement of need and reasonableness. The Commissioner's approval of the fees established in the proposed registration rules is contained in Attachment B, which is incorporated into this Statement of Need and Reasonableness.

2. Small Business Considerations.

Minnesota Statutes, section 14.115 requires administrative agencies, when proposing rules, to consider various methods for reducing the impact of the proposed rules on small businesses and to provide the opportunity for small businesses to participate in the rulemaking process. The policy behind this statute is clearly to protect small businesses. However, section 14.115, subdivision 7, states that "agency rules that do not affect small businesses directly" are not to be bound by this section. (emphasis added).

It is the Commissioner's position that, although a large majority of hearing instrument selling businesses in Minnesota are small businesses within

the definition of Minnesota Statutes, section 14.115, subdivision 1, the proposed registration rules will not affect small businesses directly, and therefore are exempt from the small business statute pursuant to Minnesota Statutes, section 14.115, subdivision 7(b). The Commissioner's position is based on three facts. First, the proposed registration system allows people to register, not businesses, and regulates the practices of hearing instrument dispensers whether or not the dispensers are operating as part of or as a small business. Second, the registration system is voluntary. Registration is not a prerequisite for selling and fitting hearing instruments. The only restrictions in a registration system involve the use of protected titles; such as, hearing instrument dispenser. Only those individuals who have met predetermined qualifications and have registered with the Commissioner will be allowed to use the protected titles. All others will be prohibited from using the protected titles. Therefore, if the registration system is considered a burden by small businesses that employ one or more hearing instrument sellers, there is no requirement that businesses hire registered individuals. Third, the proposed registration rules for hearing instrument dispensers do not directly affect the small businesses within the meaning of the statute. Minnesota Statutes, section 14.115 requires an agency to consider the impact on small businesses when the proposed rules establish compliance or reporting requirements or design or operational standards for businesses. Here, the proposed registration rules for hearing instrument dispensers do not set up compliance or reporting requirements or design or operational standards for businesses. Minnesota Statutes, section 214.13, subdivision 1, authorizes the

Commissioner of Health to regulate "... persons practicing in ... occupations" (emphasis added), not businesses. Individuals, not businesses, are allowed to register as hearing instrument dispensers. Section 14.115 is designed to require agencies to consider minimizing the impact of proposed rules that directly require small businesses to meet compliance or reporting requirements within specified schedules or deadlines or to meet design or operational standards. It is not designed to require agencies to consider the indirect effects rules which regulate individuals may have on small businesses.

However, should these proposed rules in some way be construed as directly affecting small businesses, the Commissioner has considered the five suggested methods listed in section 14.115, subdivision 2, for reducing the impact of the proposed rules on small businesses. The five suggested methods enumerated in subdivision 2 are as follows:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule.

The Commissioner has considered the feasibility of implementing each of the five suggested methods, considered whether implementing any of the five methods would be consistent with the statutory objectives that are the basis

for this rulemaking, and concluded the following:

a. It would not be feasible to incorporate any of the five suggested methods into these proposed rules.

Methods (a)-(c) of subdivision 2 relate to lessening compliance or reporting requirements for small businesses either by (a) establishing less stringent requirements, (b) establishing less stringent schedules or deadlines for compliance with the requirements, or (c) consolidating or simplifying the requirements. Since the Commissioner is not proposing any compliance or reporting requirements for either small or large businesses, it follows that there are no such requirements for the Commissioner to lessen with respect to small businesses. If, however, these proposed rules are viewed as compliance or reporting requirements for businesses, then the Commissioner finds that it would be unworkable to lessen the requirements for those hearing instrument dispensers who are in a business setting with fewer than 50 employees, since that would include the vast majority of hearing instrument dispensers.

Complete statistical information about the number of sellers or the size of businesses that employ hearing instrument sellers in Minnesota do not exist because no previous state regulation required all hearing instrument sellers to be listed in any way with the state. However, Department staff has information from the hearing instrument selling community which indicates that the great majority of hearing instrument selling businesses employ 20 people or less. According to information from the hearing instrument selling community, the three largest employers of hearing instrument sellers in Minnesota employ less than 50 people. Therefore, lessening the requirements

for hearing instrument dispensers in business settings with 50 employees or less would be unworkable because the lessened requirements would then be the predominant requirement, not the exception. Also, the registration system is voluntary and will not prohibit anyone from working or engaging in their area of livelihood.

Method (d) suggests replacing design or operational standards with performance standards for small businesses. The Commissioner is not proposing design or operational standards for businesses, and therefore there is no reason to implement performance standards for small businesses as a replacement for design or operational standards that do not exist. Finally, method (e) suggests exempting small businesses from any or all requirements of the rules. Under the Commissioner's view that these proposed rules do not in any way regulate the business operation of hearing instrument dispensers, there are no rule requirements from which to exempt small businesses. However, if these proposed rules are viewed as regulating businesses insofar as they regulate hearing instrument dispensers, then it would hardly make sense for the Commissioner to exempt from these rules those hearing instrument dispensers who practice in a business setting with fewer than 50 employees, since they constitute the vast majority of hearing instrument dispensers. Also, as discussed above, the registration system is voluntary. Individuals are free to not register, regardless of their affiliation with small businesses. For all of these reasons, it is not feasible for the Commissioner to incorporate into these proposed rules any of the five methods specified in subdivision 2 of the small business statute.

b. Reducing the impact of these rules on small businesses would undermine the objectives of the registration system.

Minnesota Statutes, section 214.13 charges the Commissioner with the duty of recommending appropriate regulatory modes for human service occupations not now credentialed by the state and further requires the Commissioner to promulgate rules for standards and procedures relating to the credentialing of persons practicing in the occupations. Given these statutory mandates, it is the Commissioner's duty to establish registration procedures which apply equally to and govern all applicants and registrants, regardless of the size of their business setting. As stated above, it is the Commissioner's position that the proposed rules will not directly affect small businesses, and do not have the potential for imposing a greater impact on hearing instrument dispensers in a setting with fewer than 50 employees than on hearing instrument dispensers in a large business setting. It has also been explained above that the Commissioner considers it infeasible to implement any of the five suggested methods enumerated in subdivision 2 of the small business statute. Nonetheless, to the extent that the proposed rules may affect the business operation of a hearing instrument dispenser and to the extent it may be feasible to implement any of the suggested methods for lessening the impact on small businesses, the Commissioner believes it would be unwise and contrary to the purposes to be served by these rules for her to exempt one group of hearing instrument dispensers - indeed, the majority of hearing instrument dispensers - from the requirements of these proposed rules.

The Commissioner's decision to register the occupations was, in part, based on her conclusion that some confusion exists regarding the level of

education and training possessed by hearing instrument sellers. The Commissioner has authority to register individuals in occupations and to promulgate rules for registration. Minnesota Statutes, section 214.13, subdivisions 1 and 3. The basic statutory intent of Minnesota Statutes, 214.13 is to protect the hearing instrument consumer. Given the statutory authority and intent of 214.13, it is the Commissioner's duty to establish a registration system which applies to and governs all hearing instrument dispensers, regardless of the size of their business setting. If small businesses were allowed different hearing instrument dispenser registration standards, the consumer who chooses to buy from that small business may be less protected than one who buys a hearing instrument from a large business. While it is true that applying different standards to small businesses would be less burdensome for them, such an action would badly frustrate the intent of section 214.13 to protect all hearing instrument consumers. In fact, applying lesser standards to small businesses may actually weaken the small business market for hearing instruments because consumers may choose larger companies that offer more protections through the registration. Therefore, if the registration requirements were less for hearing instrument dispensers in small businesses, those dispensers may not be as competitive in a market with larger businesses that comply with the proposed registration system. Also, as stated above, the registration system is voluntary. A person may choose not to be registered.

It would be contrary to the Commissioner's statutory authority to adopt one set of regulations that would apply to those hearing instrument dispensers

who work in a large business setting and adopt another less stringent set of regulations to be applied to those hearing instrument dispensers who work in a small business setting. It is the Commissioner's view that these proposed rules must apply equally to all hearing instrument dispensers if the public whom they serve is to be adequately protected.

Minnesota Statutes, section 214.001, subdivision 2 (d) requires the Commissioner to consider whether the overall cost effectiveness and economic impact of the proposed regulation would be positive for the citizens of the state. Therefore, the Commissioner has already taken the cost impact of the proposed registration system into consideration and determined that the proposed registration system is the best method to regulate the occupation.

Hearing instrument dispensers, regardless of whether they are considered as individuals or small businesses, will have an opportunity to participate in the rulemaking process. A notice of the proposed rulemaking will be mailed to the following organizations which will likely represent any entity affected by the rules which might claim to be a small business:

1. Minnesota Hearing Aid Society;
2. Minnesota Speech, Language, and Hearing Association;
3. American Association for Retired Persons; and
4. Minnesota Foundation for Better Hearing and Speech.

A notice of the proposed rulemaking will also be mailed to over 400 individuals who sell hearing instruments and to all those who have requested to be on the Department of Health's mailing list.

In addition to mailing the notice as described above, Department staff

has maintained informal contact with members of the Minnesota Hearing Aid Society and other hearing instrument sellers regarding the proposed rules during the entire rulemaking process. Department staff has also hosted several informal meetings with individual hearing instrument sellers over the past months and hosted a planning meeting for the proposed rules with approximately fifteen industry representatives.

The Minnesota Legislature has been supportive of the proposed registration system for hearing instrument dispensers. When Minnesota Statutes, chapter 153A was amended in 1988 to authorize the creation of a mandatory permit system for hearing instrument sellers the Legislature also provided funding for creation of the registration system for hearing instrument dispensers. The Legislature re-funded the registration development activity in the 1989 session.

STATEMENT OF NEED AND REASONABLENESS

A. General Statement of Need and Reasonableness

In addition to the statutory authority allowing the Commissioner to implement the registration system, there are several public policy reasons for developing a hearing instrument dispenser registration system in this state. First, the registration system will allow the Commissioner to set minimum qualifications which must be met before a hearing instrument seller is eligible to register and use the protected titles. From evidence gathered in

the review mandated by the Legislature, the Commissioner concluded that consumers need a mechanism to distinguish between training levels of people in various occupations who sell and fit hearing instruments. The registration system will enable the state to develop a central registry of all registered hearing instrument dispensers in the state. The central registry will consist of a list of all hearing instrument dispensers who have met predetermined qualifications and registered with the Department of Health. This information will be useful to consumers to lessen or eliminate confusion about the qualifications of persons selling hearing instruments in Minnesota.

The second public policy reason for the registration system relates to the consumer protection responsibilities of the state. The registration system will enable the state to hold a registered hearing instrument dispenser accountable to consumers more easily and quickly than was before possible. The proposed registration rules provide the state with a mechanism for disciplining hearing instrument sellers by denying initial registration, and for disciplining hearing instrument dispensers by denying renewal of registration, suspending registration, and revoking registration. These disciplinary tools will be used in response to violations of state and federal laws committed by hearing instrument dispensers and may be used in conjunction with the discipline section of the proposed permit system.

Prior to the proposed registration and permit systems, the state has been limited in its ability to effectively discipline hearing instrument sellers. The state was limited to mediating consumer complaints against hearing instrument sellers and when mediation was unsuccessful, filing suit against

the seller for injunctive relief. While lawsuits are effective ways to enjoin conduct that violates state and federal laws, these lawsuits are costly and time consuming. The registration and permit systems will provide a more expedient way to resolve cases involving hearing instrument dispensers violating state and federal law. It also will provide a less costly alternative to a lawsuit for injunctive relief. Therefore, the registration system provides not only an informational list of qualifications of all registered hearing instrument dispensers in Minnesota, but also a new mechanism, in addition to the proposed permit system, for the state to effectively monitor and enforce state and federal laws.

The Determination of the Commissioner of Health (Attachment A) sets out, at pages 2 and 3, some of the potential and actual harm to consumers found during the review of hearing instrument sellers mandated by the Legislature:

> Regarding the hearing instrument dispensers, the Human Services Occupations Advisory Counsel (HSOAC) found that there were problems regarding abuse of the so-called "Food and Drug Administration waiver." The waiver allows adults (18 and over) to waive the right to a medical evaluation by signing a form. FDA rules require that a copy of the medical prescription or signed waiver form must be retained by the dispenser for 3 years following the sale of the aid.
>
> HSOAC also found problems with refunds during the 30 day money-back guarantee period, dispenser bankruptcies, servicing, and high pressure sales tactics, and with the high cost of hearing aids. HSOAC concluded that the potential for harm existed in dispensing of hearing aids because a large number of clientele is elderly and there appears to be confusion on the part of consumers over the waiver. Financial harm might also occur as a result of a purchase of an aid which was not needed or improperly fit. ...
>
> Health Department staff identified several sources of potential harm with respect to hearing aid dispensing: misleading information in mass marketing materials; door-to-door sales without mechanisms for resolving complaints; high pressure

sales tactics; poor or non-existent servicing of instruments; misrepresentation of credentials or levels of competency; deception through the use of false claims regarding hearing restoration; sales by transients not available to provide follow-up services; misfitting of instruments because of inadequately or poorly trained dispensers; no complaint system; no recourse other than the legal system.

However, the actual numbers of complaints about such activities were low with respect to the volume of hearing aids sold. Also, a large number of complaints were generated by a very few dealers. Finally, documentation of actual harm occurring as a result of any of the activities listed above was very limited. Therefore, staff concluded that while some actual harm had occurred and the potential for harm was real, the frequency and magnitude of actual harm was not great.

1. The unregulated practice of hearing instrument dispensers may harm or endanger the health, safety and welfare of citizens of the state and the potential for harm is recognizable and not remote.

In relation to the number of hearing aids sold in Minnesota on a yearly basis, the number of hearing instrument complaints is small. However, some harm has actually occurred in the industry and the potential for harm is real. Among the types of harm that have been identified are misleading information in mass marketing materials, poor servicing of instruments, misrepresentation on levels of competency, high pressure sales tactics, misfitting instruments, and sales by sellers who may have no regular place of business in the state. The consumers are typically elderly and many suffer from a number of other mental and physical handicaps in addition to their hearing impairment.

Until October 1, 1988, the Attorney General's Office in Minnesota handled complaints by consumers of hearing instruments. In the years 1985 and 1986, the number of complaints about hearing instrument sales was 77. So while the potential for harm is recognizable and not remote, the relative number of complaints in the state is low. Based on that conclusion, the Commissioner

did not recommend licensure for hearing instrument sellers, but recommended strengthening the consumer protection and consumer information systems in addition to the registration system. The consumer protection system includes handling consumer complaints and providing consumer information by Minnesota Department of Health staff. The consumer information system will work to facilitate sharing of information among seller organizations, hearing impaired organizations, and the consuming public. The registration system will provide consumers a central registry of hearing instrument dispensers who have met predetermined minimum qualifications and have registered with the Department of Health. The registration system will also provide the state a means to more effectively monitor hearing instrument dispensers and it will be used in conjunction with the permit system and the consumer protection and information systems.

2. The practice of hearing instrument dispensing does not require specialized skill or training but the public may benefit by assurances of initial and continuing occupational ability.

The Commissioner decided to register hearing instrument dispensers, rather than license the occupation. In part, her reasoning was based on the fact that evidence gathered during the review process failed to show that the public was harmed by hearing instruments sellers who did not meet educational or training standards or were improperly or inadequately trained. In the Commissioner's view the criteria set forth in Minnesota Statutes, section 214.001 justifies licensure only when actual evidence of nonremote risk of harm exists and is related specifically to inadequate education and training. The review process did raise some concerns about screening, testing and

evaluation of hearing loss, various practitioners who may perform one or more of the functions involved in those processes, and the potential for harm resulting from poorly trained sellers of hearing instruments. There was also evidence of harm, on a very limited basis, that some sellers of hearing instruments, may "overbill" their qualifications. In addition, the Commissioner concluded use of the term "certified hearing aid audiologist" could be deceptive and misleading to consumers when used by persons without academic and professional training as audiologists. Information gathered during the review showed that hearing instruments are sold by physicians, audiologists and people who may have no training or training of less than one year. The information gathered also showed that consumers were confused about the various training levels of people who sell hearing instruments. Although the concerns did not constitute the harm necessary to justify licensure, the Commissioner believed that registration could benefit the public by addressing the concerns raised.

The Commissioner concluded that it was not clear what type of training of hearing instrument sellers would be most helpful, but she determined that the public could benefit by assurances of the seller's initial and continuing ability. She also decided that the public could benefit by knowing which sellers of hearing instruments meet minimum requirements set by the state. The registration system will distinguish those who have met minimum credentials by allowing them the exclusive use of protected titles. Such information will allow the public to make informed decisions about the purchase of hearing instruments.

Department of Health staff at the consumer information center will work to educate consumers about the registration system and other consumer protection available. The registration system, in combination with the other proposed consumer protection services, will work to inform the public, distinguish the various practitioners who sell hearing instruments, and allow consumers to make informed decisions. The combined effect of the described systems will adequately protect the citizens of Minnesota.

3. The citizens of Minnesota are not effectively protected by other means.

Even though there are existing federal and state laws to protect consumers, the Commissioner determined that the laws were not adequate. While these existing legislative schemes serve a useful function, the introduction of the registration and permit systems will strengthen the impact of the existing laws and allow for a more uniform enforcement of the laws. Under Federal law, the Food and Drug Administration prohibits the sale of an aid to a minor without a physician prescription, and persons 18 years and older may waive the requirement of a medical evaluation. In addition, the seller must note and look for eight medical conditions of the buyer; if the buyer shows any of these eight conditions, the seller is required to refer the buyer to a physician and there can be no waiver. Federal law also requires that each buyer receive from the seller a User Information Booklet, and that the seller retain on file a record of the physician prescription, or a signed medical waiver for a period of three years. The same Food and Drug Act requires that if an aid is rebuilt or used, some labelling be directly on the

aid to inform the consumer of that fact.

Minnesota state law also offers some protection to hearing instrument consumers in conjunction with the proposed registration rules. Minnesota Statutes, sections 325F.68, 325F.69, and 325F.70 protect the consumer in connection with the sale of any merchandise. These statutes prohibit such acts as fraud, false pretense, false promise, misrepresentation, making misleading statements, and deceptive practices. Enforcement of these sections is within the exclusive domain of the Attorney General's Office and the only sanction allowed is the injunction.

As stated earlier, the Commissioner believed the existing laws were not adequate to address concerns raised in the review process. The Commissioner believes the consumer information center, and the registration and permit systems will complete the protection consumers need.

4. The overall cost effectiveness and economic impact would be positive for citizens of Minnesota.

Pursuant to Minnesota Statutes, sections 16A.128 and 214.06, the application fees and any other fees necessary for the administration of the registration system will be borne by the registered hearing instrument dispensers. The fact that the registered hearing instrument dispenser population will bear the cost of all fees required for the administration of the registration system means that the very group to be regulated will be paying the cost of its administration. The hearing instrument consumers of Minnesota may ultimately have to bear the costs due to increased product and service costs reflecting the costs of hearing instrument dispensers' registration fees, but these consumers are also the primary beneficiaries of

the regulatory activity. The proposed registration fees may not exceed the administrative costs under Minnesota Statutes, section 16A.128.

This introductory statement outlines the public policy reasons for the registration rules. It is necessary to outline these policy reasons to facilitate a general understanding of the reason for these proposed registration rules. It is reasonable to state the purpose for the registration rules because the system will set the minimum qualifications that hearing instrument sellers using protected titles must meet and is a way to monitor registered hearing instrument dispensers. These two goals will be achieved when the proposed registration rules are adopted and the registration system established. No such system currently exists. Hearing instrument dispensers are not currently required to meet any minimum qualifications. The rules also serve to establish procedures for issuing, refusing to issue, denying a renewal, suspending, and revoking registration. These procedures will create a roster of registered hearing instrument dispensers and provide the state with a mechanism for qualifying and disciplining the registrants where no such mechanism previously existed.

Minnesota Statutes, section 214.13, subdivision 3 states in part:

> Rules promulgated by the commissioner pursuant to subdivision 1 may include procedures and standards relating to the registration requirement, the scope of authorized practice, fees, supervision required, continuing education, career progression and disciplinary matters.

The proposed registration rules include provisions relating to all of the above except supervision required and career progression.

Although no provision in the rules is entitled "scope of authorized

practice," the definitions set out in the rules of "hearing instrument," "hearing instrument dispenser," and "hearing instrument selling" taken together generally define the scope of authorized practice of hearing instrument dispensers. Part 4745.0010, subpart 11 defines "hearing instrument dispenser," in part, as " a hearing instrument seller as defined in subpart 12, who meets the qualifications required by parts 4745.0010 to 4745.0060, and registers with the commissioner." The scope of authorized practice for hearing instrument dispensers is hearing instrument selling which, as defined by part 4745.0010, subpart 13 and by Minnesota Statutes, section 153A.13, subdivision 4 means: " ... fitting and selling hearing instruments, assisting the consumer in instrument selection, selling hearing instruments at retail, and testing human hearing in connection with these activities." Hearing instrument is defined by part 4745.0010, subpart 10 and by Minnesota Statutes, section 153A.13, subdivision 3 as:

> An instrument designed to or represented as being able to aid defective human hearing. "Hearing instrument " includes the instrument's parts, attachments, and accessories, including, but not limited to, ear molds. Batteries and cords are not parts, attachments, or accessories of a hearing instrument. Surgically implanted hearing instruments, and assistive listening devices that do not require testing, fitting, or the use of ear molds and are not worn within the ear canal, are not hearing instruments.

Other than providing the group of definitions as set out above, there is no need to further define scope of authorized practice for hearing instrument dispensers. Further, it is reasonable that parts 4745.0010 to 4745.0060 does not define scope of authorized practice because the registration system does not prohibit anyone from selling hearing instruments whether registered or

not, therefore limiting the activities of a registered hearing instrument dispenser could be viewed as unreasonable.

The rules do not have a provision regarding supervision required in hearing instrument selling because selling of hearing instruments is largely an independent, unsupervised activity. In addition, supervision, or lack of it, was not found to be a problem in the occupation of hearing instrument selling during the Health Department's review. Therefore, there was no need in parts 4745.0010 to 4745.0060 to require hearing instrument dispensers to be supervised.

No provision of the rules deals with career progression of hearing instrument dispensers. The Health Department review did not find career progression, marked by different titles or duties, to be characteristic of the occupation of hearing instrument selling. Also, no need to provide for regulation of career progression was found during the credentialing review, that is, no specific harm was shown to be due to improper career progression.

A hearing instrument seller must meet the minimum requirements set by these rules and register with the commissioner before he or she can use any of the protected titles provided by the rules. Continuing education is required as a prerequisite of registration renewal after the first renewal. However, other than meeting entry and continuing education requirements these registration rules do not require the meeting of standards to show evidence of career progression.

B. Specific Statement of Need and Reasonableness for Proposed Registration Rules.

PROPOSED PERMANENT RULES RELATING TO HEARING INSTRUMENT DISPENSER REGISTRATION

4745.0010 DEFINITIONS.

Subpart 1. SCOPE. FOR PURPOSES OF PARTS 4745.0010 TO 4745.0060, THE FOLLOWING TERMS HAVE THE MEANINGS GIVEN TO THEM.

It is necessary to define in this part those words which are used in these proposed rules because they are key to understanding the business of hearing instrument selling and the registration system for hearing instrument dispensers. It is reasonable to define these terms because it promotes uniform understanding of the use of these terms.

Subpart 2. ACTIVE PRACTICE. "ACTIVE PRACTICE" MEANS ENGAGED IN HEARING INSTRUMENT SELLING FOR A MINIMUM OF 750 HOURS A YEAR FOR THREE OF THE LAST FIVE YEARS.

It is necessary to include this definition in the rules because the phrase "active practice" is referred to in the rules, and, as used in the rules, the term gives certain rights. It is reasonable to define active practice as set out above because the definition takes into consideration that experience gained during practice over a three year period within the last five years is likely to provide valuable skills and knowledge. It is reasonable to give such skill, knowledge and experience recognition in this registration system.

Subpart 3. ADVISORY COUNCIL. "ADVISORY COUNCIL" MEANS THE MINNESOTA HEARING INSTRUMENT DISPENSER ADVISORY COUNCIL ESTABLISHED UNDER MINNESOTA STATUTES, SECTION 214.13, SUBDIVISION 4.

It is necessary and reasonable to include this definition in the rules because an advisory council will be created to advise the commissioner. Although other advisory councils exist in Minnesota, the term as used in these rules refers only to the Minnesota Hearing Instrument Advisory Council. The definition is reasonable because it clearly indicates the advisory council referred to in these proposed rules. The definition is also reasonable because it gives the statutory authority for the creation of the advisory council. Minnesota Statutes, section 214.13, subdivision 4 states in part: "The commissioner of health may establish an advisory council to advise the commissioner or the appropriate health-related licensing board on matters relating to the registration and regulation of an occupation.

Subpart 4. APPLICANT. "APPLICANT" MEANS A PERSON WHO APPLIES TO THE COMMISSIONER FOR REGISTRATION OR REGISTRATION RENEWAL.

Throughout these rules "applicant" will mean an applicant for registration or registration renewal as a hearing instrument dispenser. It is necessary to define an applicant as described in order to distinguish those seeking registration or registration renewal from those who possess registration. The definition is reasonable because it clarifies that an applicant is one who has submitted an application to the Commissioner of Health for registration or registration renewal but has not yet received registration.

Subpart 5. APPROVED CONTINUING EDUCATION SPONSOR. "APPROVED CONTINUING EDUCATION SPONSOR" MEANS AN ORGANIZATION THAT OFFERS A LEARNING EXPERIENCE DESIGNED TO PROMOTE CONTINUING COMPETENCY IN THE PROCEDURES AND TECHNIQUES OF HEARING INSTRUMENT SELLING AS DEFINED IN SUBPART 13 AND THAT MEETS THE CRITERIA STATED IN PART 4745.0045, SUBPART 3.

It is necessary to include this definition in the rules because the phrase "approved continuing education sponsor" is referred to in the rules and

means an organization that has met specific criteria set out in part 4745.0045 of the rules. The definition is reasonable because it refers to concrete standards set out in the rules.

Subpart 6. COMMISSIONER. "COMMISSIONER" MEANS THE COMMISSIONER OF THE DEPARTMENT OF HEALTH OR DESIGNEE.

It is necessary to define the term "Commissioner" as the Commissioner of the Department of Health because it distinguishes this commissioner from those of other state agencies. It is reasonable to define Commissioner as the Commissioner of Health because it is consistent with the definition provided in the authorizing statute, Minnesota Statutes, section 214.13, subdivision 1. It is also necessary to define "Commissioner" as including designee because it may be necessary for the commissioner to assign to a person within or outside of the Department of Health tasks that she is authorized to perform. It is reasonable that the Commissioner be able to delegate administrative tasks. The designee is authorized to do only that which the Commissioner is authorized to do and has chosen to delegate.

Subpart 7. CONTACT HOUR. "CONTACT HOUR" MEANS AN INSTRUCTIONAL SESSION OF 50 CONSECUTIVE MINUTES, EXCLUDING COFFEE BREAKS, REGISTRATION, MEALS WITH OR WITHOUT A SPEAKER, AND SOCIAL ACTIVITIES.

It is necessary to define the term "contact hour" because the term is used in the rules as a uniform unit of measurement to designate attendance at continuing education activities. It is reasonable to define the minimum unit of time as 50 minutes for the following reasons. When time periods set apart for continuing education exceed two or three clock hours (one clock hour is 60 minutes), small amounts of time are needed for primarily social or

administrative functions such as coffee breaks, registration and meals with a speaker. Due to the primary social or administrative character of the time described, it makes sense that the time for those functions would not be considered continuing education activities. Following that reasoning, it is logical to exclude the time used for those functions from the term used to measure attendance at a continuing education activity. However, the Commissioner also recognizes that time is needed for primarily administrative and social functions in order to conduct continuing education functions. Another registration system in Minnesota defines contact hour in a similar way to the above definition. The rules for the registration of environmental health specialists/sanitarians at part 4695.2600, subpart 5 defines "contact hour" as "... an instructional session of 50 consecutive minutes excluding coffee breaks, registration, meals (with or without a speaker), or other social activities." For all of the above reasons, it is therefore reasonable to define a contact hour as 50 minutes.

Subpart 8. CREDENTIAL. "CREDENTIAL" MEANS A LICENSE, PERMIT, CERTIFICATION, REGISTRATION, OR OTHER EVIDENCE OF QUALIFICATION OR AUTHORIZATION TO ENGAGE IN HEARING INSTRUMENT SELLING ISSUED BY ANY AUTHORITY.

It is necessary to include this definition in the rules because the term "credential" is used in the rules and has a meaning that, although consistent with the common usage of the term, may differ from definitions given in dictionaries and is specific to the subject area of occupational regulation. The definition is reasonable because it is consistent with common usage but also clarifies that any qualification or authorization to engage in hearing instrument dispensing issued by a private body or governmental unit will be considered a credential for the purposes of these rules. States regulate the

occupation of hearing instrument selling through a variety of methods. Private organizations also issue evidence of qualification for various occupations. This definition encompasses any evidence of qualification or authorization issued by either type of body.

Subpart 9. CREDENTIALING. "CREDENTIALING" MEANS THE PROCESS OR SYSTEM FOR ISSUING A CREDENTIAL OR OTHERWISE ISSUING EVIDENCE OF QUALIFICATION OR AUTHORIZATION TO ENGAGE IN HEARING INSTRUMENT SELLING.

It is necessary to include this definition because the term is used in the rules to refer to a unique process for qualifying or authorizing persons to practice occupations. The definition is reasonable because it is consistent with common usage and it clarifies that credentialing is any process which gives evidence of qualification or authorization to engage in hearing instrument selling.

Subpart 10. HEARING INSTRUMENT. "HEARING INSTRUMENT" IS AS DEFINED IN MINNESOTA STATUTES, SECTION 153A.13, SUBDIVISION 3.

It is reasonable and necessary to define "hearing instrument" as it is already defined in Minnesota statute because it reduces confusion. By directing the reader to the statute, the reader is assured that the rules use the same definition for this term as is used in Minnesota Statutes, section 153A.13, subdivision 3.

Subpart 11. HEARING INSTRUMENT DISPENSER. "HEARING INSTRUMENT DISPENSER" MEANS A HEARING INSTRUMENT SELLER AS DEFINED IN SUBPART 12, WHO MEETS THE QUALIFICATIONS REQUIRED BY PARTS 4745.0010 TO 4745.0060, AND REGISTERS WITH THE COMMISSIONER. AS USED IN PARTS 4745.0010 TO 4745.0060, THE TERM HEARING INSTRUMENT DISPENSER ALSO REFERS TO A NATURAL PERSON USING THE TITLE CONSULTANT, DISPENSER, OR SPECIALIST IN CONJUNCTION WITH EITHER HEARING INSTRUMENT OR HEARING AID.

It is necessary to include this term in the definitions section because

it will be used to indicate persons who meet minimum qualifications set by the rules and are registered with the commissioner. It is also necessary to define the term to clarify that the registration system regulates individuals and not businesses. The definition is reasonable because it clearly states the elements necessary to use the term and gives the titles which may be used interchangeably with the term. The definition is also reasonable because the Commissioner has authority to set prerequisites for registration and to protect certain titles as set out in Minnesota Statutes, sections 214.001, subdivision 3 (c) and 214.13, subdivision 3.

Subpart 12. HEARING INSTRUMENT SELLER. "HEARING INSTRUMENT SELLER" MEANS A NATURAL PERSON WHO ENGAGES IN HEARING INSTRUMENT SELLING AS DEFINED IN SUBPART 13, BUT WHO IS NOT REGISTERED UNDER PARTS 4745.0010 TO 4745.0060.

This definition is necessary to make a distinction between a hearing instrument seller and a hearing instrument dispenser as defined in subpart 11. The term hearing instrument seller is used in parts 4745.0010 to 4745.0060 when it is necessary to distinguish a person who engages in hearing instrument selling but who is not registered or does not meet the requirements necessary to become registered. The definition is reasonable because it is consistent with common usage and clarifies the distinctive use of the term as used in parts 4754.0010 to 4745.0060.

Subpart 13. HEARING INSTRUMENT SELLING. "HEARING INSTRUMENT SELLING" IS AS DEFINED IN MINNESOTA STATUTES, SECTION 153A.13, SUBDIVISION 4.

It is reasonable and necessary to define "hearing instrument selling" as it is already defined by Minnesota statute. It makes it clear to the reader that this term has the same meaning in the registration rules as in the Minnesota Statutes, section 153A.13, subdivision 4, and thereby reduces

confusion.

Subpart 14. HEARING INSTRUMENT USER. "HEARING INSTRUMENT USER" MEANS A PERSON WHO WEARS OR USES A HEARING INSTRUMENT AS DEFINED IN SUBPART 10 TO AID DEFECTIVE HEARING.

It is necessary to define the term "hearing instrument user" in the rules because the term is used in the rules to designate a certain type of person who will be required to be a member of the advisory council defined in subpart 3. The definition is reasonable because it is consistent with the common usage of the term.

Subpart 15. INDIVIDUAL. "INDIVIDUAL" MEANS ANY PERSON OVER WHOM THE COMMISSIONER HAS JURISDICTION UNDER PARTS 4745.0010 TO 4745.0060. INDIVIDUAL INCLUDES AN APPLICANT, A REGISTRANT OR A PERSON WHO USES ANY TITLE PROTECTED BY PART 4745.0020, WHETHER OR NOT AUTHORIZED TO DO SO BY PARTS 4745.0010 TO 4745.0060.

It is necessary to define the term individual because the word is used in the rules and has a specific meaning as used in the rules. It is also necessary to define the term to put people on notice as to who is subject to the provisions of the rules.

It is reasonable to define individual to include the three categories of persons described because pursuant to the statutory authority set out below, the Commissioner's jurisdiction extends beyond applicants and registrants to any person who uses titles protected by the registration system whether or not they are authorized to do so.

The authority for the Commissioner to take disciplinary action against individuals who violate parts 4745.0010 to 4745.0060, including persons who use a title protected by 4745.0020 whether or not they are authorized to do so, arises out of several sections of Minnesota Statutes, chapter 214. First,

the Commissioner is authorized to register an occupation. Minnesota Statutes, section 214.13, subdivision 1, states in part "If the commissioner determines that credentialing of an occupation is appropriate, the commissioner is empowered only to register the occupation." Second, the Commissioner is authorized to protect titles through the registration system. Minnesota Statutes, section 214.001, subdivision 3, item (c) defines registration. It states, "Implementation of a system of registration whereby practitioners who will be the only persons permitted to use a designated title are listed on an official roster after having met predetermined qualifications ... ." Emphasis supplied. Third, the Commissioner is allowed to include in the registration system procedures and standards relating to several topics including disciplinary matters. Minnesota Statutes, section 214.13, subdivision 3, states in part that "Rules promulgated by the commissioner pursuant to subdivision 1 may include procedures and standards relating to the registration requirement, the scope of authorized practice, fees, supervision required, continuing education, career progression and disciplinary matters." Emphasis supplied. Fourth, in conjunction with authority to register an occupation, the Commissioner is given authority and guidelines regarding complaints, investigation and hearing by Minnesota Statutes, section 214.13, subdivision 6.

> The provisions of section 214.10, shall apply to any complaint or other communication, whether oral or written, received by the commissioner of health which alleges or implies a violation of a statute or rule which the commissioner is empowered to enforce relating to a specific occupational group for which a registration requirement has been created pursuant to this section.

Minnesota Statutes, section 214.10, subdivisions 1 and 2 relate to receipt of complaints, investigation and hearing by regulatory boards. A regulatory board is not involved in the administration of the registration system, therefore Minnesota Statutes, section 214.13, subdivision 6, is key to providing the Commissioner's disciplinary authority. Fifth, the Commissioner is given subpoena powers and allowed to delegate some duties regarding discipline by Minnesota Statutes, section 214.13, subdivision 7.

> The duties of the executive secretary or board members specified in section 214.10, subdivision 1 and 2, shall be performed with respect to occupations regulated pursuant to this section by the advisory council established under subdivision 4, or if no council has been created, by the health-related licensing board which has been delegated the administration of regulation activities, or if no such delegation has been made, by a staff member appointed by the commissioner. For the purposes of subdivision 6 and this subdivision, the commissioner may exercise the powers granted to boards by section 214.10, subdivision 3, when carrying out the duties of this subdivision.

The last sentence cited above refers to subpoena powers granted by Minnesota Statutes, section 214.10, subdivision 3.

The language of all the statutes cited above when taken together, give the Commissioner jurisdiction over applicants, registrants and persons who use any title protected by part 4745.0020, whether or not authorized to do so.

Subpart 16. REGISTER OR REGISTERED. "REGISTER" OR "REGISTERED" MEANS THE ACT OR STATUS OF A NATURAL PERSON MEETING THE REQUIREMENTS OF PARTS 4745.0010 TO 4745.0060 AND AUTHORIZED BY THE COMMISSIONER TO USE THE TITLES SET FORTH IN PART 4745.0020.

It is necessary to include these terms in the definition section because the terms will be used in the rules to indicate people who go through the process of registration or have registered. The definition is reasonable because it clarifies the specific meaning of the terms as used in these rules.

Subpart 17. REGISTRANT. "REGISTRANT" MEANS A PERSON WHO MEETS THE REQUIREMENTS OF PARTS 4745.0010 TO 4745.0060 AND IS AUTHORIZED BY THE COMMISSIONER TO USE THE TITLES IN PART 4745.0020.

It is necessary to define the term "registrant" because the term is used throughout the rules to indicate a person who meets the qualifications of the rules and is authorized to use the titles set out in part 4745.0020. The definition is reasonable because it is consistent with the requirements set out in the rules.

Subpart 18. REGISTRATION. "REGISTRATION" IS THE SYSTEM OF REGULATION DEFINED IN MINNESOTA STATUTES, SECTION 214.001, SUBDIVISION 3, PARAGRAPH (c), AND IS THE PROCESS SPECIFIED IN PARTS 4745.0010 TO 4745.0060.

It is reasonable and necessary to define the term "registration" as it is defined in the authorizing statute for this registration system in order to reduce confusion. By directing the reader to the statute, the reader is assured that the rules use the same definition for this term as is used in the authorizing statute.

4745.0020 PROTECTED TITLES AND RESTRICTIONS ON USE.

Subpart 1. PROTECTED TITLES.

A. USE OF ANY OF THE FOLLOWING TITLES BY ANY PERSON IS PROHIBITED UNLESS THAT PERSON IS REGISTERED UNDER PARTS 4745.0010 TO 4745.0060.

(1) HEARING INSTRUMENT DISPENSER;

(2) HEARING INSTRUMENT SPECIALIST;

(3) HEARING INSTRUMENT CONSULTANT;

(4) HEARING AID DISPENSER;

(5) HEARING AID SPECIALIST; AND

(6) HEARING AID CONSULTANT.

This rule specifies the titles that will be protected by the registration system and states the prerequisites for use of the titles. The rule is necessary because one of the functions of the registration system is to protect a title or titles; therefore the protected titles must be listed. It is reasonable to protect the titles listed because they are commonly used by sellers of hearing instruments and recognized by consumers.

In March of 1989, Department of Health staff completed an informal survey of all hearing instrument sellers listed under the classification "Hearing" in the Yellow Pages for St. Paul (July 1988 - July 1989) and Minneapolis (January 1989 -January 1990). A total of 80 different telephone numbers were called. The telephone numbers were for businesses. Individuals who answered were asked if they fit or sold hearing instruments and, if so, what title they used in their fitting and selling activity. The number of hearing instrument sellers in each business ranged from one to more than five. The titles listed in this rule were the most common titles used by sellers.

Restriction on use of the titles listed is necessary because the Commissioner seeks to lessen or eliminate confusion by the public about qualifications of people who use the titles. It is reasonable to restrict use of these titles to those registered under the rules because it is an effective and practical way to designate for the public those people who have met the minimum requirements to sell hearing instruments set by these rules. It is also reasonable that the list of protected titles is not a "laundry list" because a longer list would take away from the importance that can be placed on each of the protected titles by the Department of Health to the public.

The main purpose of the registration system is to protect the consumer by allowing only those people who have met minimum requirements to use protected titles. The registration system is voluntary. It should not be developed in such a way as to cause hearing instrument sellers to be coerced into being registered. If a very extensive list of titles were protected by the registration system, the effect of the registration could be coercive.

B. THE TERM "MINNESOTA REGISTERED" MAY BE USED IN CONJUNCTION WITH ANY OF THE TITLES LISTED IN ITEM A, BY ANY PERSON REGISTERED UNDER PARTS 4754.0010 TO 4745.0060.

This section authorizes registered hearing instrument dispensers to use the term "Minnesota Registered" in conjunction with their protected title. This section is necessary because the term, "Minnesota Registered," when used with protected titles, will help inform the consumer about persons who have met the state's minimum requirements and registered with the Commissioner. The section is reasonable because it uses words that are factual -- that is, if a person is registered with the Commissioner, he or she is "Minnesota Registered."

C. WHEN ENGAGED IN HEARING INSTRUMENT SELLING, A REGISTERED HEARING INSTRUMENT DISPENSER MUST BE IDENTIFIED AS SUCH BY WEARING A NAME TAG BEARING THE DISPENSER'S NAME AND ONE OF THE TITLES IN ITEM A.

This section requires registered hearing instrument dispensers to wear a name tag that bears their name and one of the protected titles. This section is necessary because it provides a definite, visual method of identifying registered hearing instrument dispensers. A visual method of identification will be especially useful to hearing impaired individuals. The requirement is reasonable because it is not burdensome to the hearing

instrument dispenser and it will benefit the consumer. Other health practitioners, such as physician assistants, nurses, and physicians, commonly use identification tags at the worksite for the purpose of informing patients or customers of name or title.

Subpart 2. RESTRICTIONS ON USE OF PROTECTED TITLES. NOTWITHSTANDING SUBPART 1, ITEM A, NO PERSON WILL BE PREVENTED OR RESTRICTED FROM USING AN OFFICIAL EMPLOYMENT TITLE IF EMPLOYED BY THE FEDERAL GOVERNMENT; HOWEVER, USE OF THE OFFICIAL TITLE, UNDER THOSE CIRCUMSTANCES, IS ALLOWED ONLY IN CONNECTION WITH PERFORMANCE OF OFFICIAL DUTIES FOR THE FEDERAL GOVERNMENT.

It is necessary to exempt employees of the federal government, while performing official duties, from restrictions on use of certain titles created by these rules. The state has no jurisdiction over federal worksites in Minnesota so these rules cannot control the practices of federal employees in their official duties. This section is reasonable because it exempts federal employees from the requirements of the rules only while they are working in their official capacity.

4745.0025 REGISTRATION REQUIREMENTS.

Subpart 1. GENERAL REQUIREMENTS. AN APPLICANT MUST:

A. BE 18 YEARS OF AGE OR OLDER;

It is necessary to set out registration requirements because one of the functions of the registration rules is to give exclusive use of protected titles to people who have met minimum requirements. This subpart is necessary to define the general requirements every applicant for registration must meet as a prerequisite of registration. Item A is necessary to put applicants on notice of the minimum age requirement of the registration system. It is

reasonable to set the minimum age requirement at 18 years of age because that age is commonly accepted as coincident with a maturity level necessary for taking on a variety of adult responsibilities in Minnesota.

B. SUBMIT AN APPLICATION AS REQUIRED IN PART 4745.0035, SUBPART 1;

This item is necessary in order to provide the Commissioner with information needed to determine the applicant's eligibility for registration. It is reasonable to require an applicant to complete and submit an application as a tool to gather and process information about applicants for registration because applications are a common and efficient tool used in many types of regulation including occupational regulation.

C. SUBMIT CERTIFICATION TO THE COMMISSIONER THAT THE APPLICANT'S AUDIOMETRIC EQUIPMENT HAS BEEN CALIBRATED WITHIN 12 MONTHS OF THE DATE OF THE APPLICATION; AND

This item is necessary because audiometric equipment used in the evaluation of hearing sensitivity can produce inaccurate results if not properly calibrated. It is also necessary that the calibration be performed on a regular basis. Department staff has been advised by members of the hearing instrument selling community that yearly calibration is sufficient to provide the consumer with audiometric equipment that is functioning properly. It is reasonable to require that an applicant provide certification to the commissioner that his or her audiometric equipment has been calibrated within twelve months of the date of application for registration because properly functioning audiometric equipment should not be considered a burden to a hearing instrument dispenser, rather such equipment should be considered a fulfillment of a minimum requirement. Also, if applicants are in the business

of hearing instrument selling, it is likely that the applicant currently arranges for regular calibration of their audiometric equipment. Therefore, the requirement of this item will not be overly burdensome and is reasonable.

D. SUBMIT ALL FEES REQUIRED UNDER PART 4745.0050.

Fee requirements are necessary because the authorizing statute requires that the registration system be entirely fee supported. See Minnesota Statutes, sections 214.06, 214.13 and 16A.128. The fees are necessary because they will support the cost of administering the registration system, including any examinations given and the Commissioner's direct expenditures for adoption of the registration rules. Minnesota Statutes, section 214.06 requires that fees, charged to members of an occupation registered after July 1, 1984 by the commissioner of health under the provision of section 214.13, must include an amount necessary to recover, over a five-year period, the commissioner's direct expenditures for adoption of the rules. It is reasonable to require the fees because they relate to specific, necessary administrative costs. Failure to cover these costs would not be in compliance with Minnesota Statutes, sections 214.06, 214.13 and 16A.128.

Subpart 2. REGISTRATION BY EXAMINATION. EXCEPT AS PROVIDED IN PART 4745.0030, AN APPLICANT MUST ACHIEVE A PASSING SCORE, AS DETERMINED BY THE COMMISSIONER, ON AN EXAMINATION ACCORDING TO ITEMS A TO C.

This subpart is necessary because one method of gaining the right to the exclusive use of the protected title is by examination. It is reasonable because examinations are commonly accepted as valid methods of assuring minimum competency to do specific tasks. A variety of other occupations use exams as a means of qualifying for use of protected titles or to work in the

occupation. Some occupations that currently use exams as a prerequisite for use of protected title are physician assistants, emergency medical technicians and environmental health sanitarians. Some health occupations that use exams for entry requirements to practice are nursing, medicine and dentistry. It is also reasonable to state that the Commissioner will determine the passing score on the examination because the advice of the advisory council will be available to the Commissioner for such decisions which may require occupational expertise.

A. THE EXAMINATION MUST INCLUDE BUT NOT BE LIMITED TO:

(1) A WRITTEN EXAMINATION APPROVED BY THE COMMISSIONER COVERING THE FOLLOWING AREAS AS THEY PERTAIN TO HEARING INSTRUMENT SELLING:

This provision is consistent with the authority provided by Minnesota Statutes, section 214.13, subdivision 3, which allows rules promulgated under the authority of 214.13 to include " ... procedures and standards relating to the registration requirement ... ." It is necessary and reasonable to specify in the rules that a written examination approved by the Commissioner will be required as a standard. It is necessary because it provides the Commissioner with some instrument to measure the initial entry level competence of applicants for registration. It is reasonable because registered hearing instrument dispensers should be able to pass a written examination of information which the Commissioner considers essential to the practice of the occupation.

(a) BASIC PHYSICS OF SOUND;

(b) THE ANATOMY AND PHYSIOLOGY OF THE EAR;

(c) THE FUNCTION OF HEARING INSTRUMENTS; AND

Subitems 1 (a) through (c) are necessary because a registered hearing instrument dispenser must understand the basic physics of sound, the anatomy and physiology of the ear and the function of hearing aids in order to be competent in testing hearing and fitting hearing aids. Health Department staff has found that the above listed items are common elements in the licensing examinations of several other states, including North Dakota, South Dakota, Iowa, Wisconsin, Michigan, California and Florida.

It is reasonable to require that a registered hearing instrument dispenser understand the information described in subitems 1 (a) through (c) because the registration system allows exclusive use of titles to persons who meet minimum requirements of an occupation and the topics listed are some of the minimum requirements of hearing instrument dispensing.

(d) LAWS, RULES, AND REGULATIONS OF MINNESOTA AND THE FEDERAL GOVERNMENT.

It is necessary to require registered hearing instrument dispensers to pass an examination about the laws, rules, and regulations of Minnesota and the federal government because they are less likely to harm or endanger the health, safety and welfare of consumers if such knowledge is possessed. It is reasonable to require knowledge of the described information because, whether or not registration is in place, all sellers of hearing instruments are expected to know and follow the laws, rules, and regulations described.

(2) PRACTICAL TESTS OF PROFICIENCY IN THE FOLLOWING TECHNIQUES AS THEY PERTAIN TO HEARING INSTRUMENT SELLING:

This provision, as with the provision for written tests, is consistent

with the authority provided by Minnesota Statutes, section 214.13 subdivision 3, which allows rules promulgated under 214.13 to set minimum standards. The occupation of hearing instrument selling includes elements of work with the hands, especially the fitting of the hearing instrument itself, therefore it is necessary to provide the Commissioner with a method to measure practical knowledge of the applicant for registration. It is reasonable to require registered hearing instrument dispensers to demonstrate practical proficiency in several techniques necessary to the fitting of hearing instruments because, absent that proficiency, the applicant should not be allowed to use a title which proclaims to the consumer that he or she is competent.

(a) PURE TONE AUDIOMETRY, INCLUDING AIR CONDUCTION TESTING AND BONE CONDUCTION TESTING;

(b) LIVE VOICE OR RECORDED VOICE SPEECH AUDIOMETRY INCLUDING SPEECH RECEPTION THRESHOLD TESTING AND MOST COMFORTABLE LOUDNESS MEASUREMENTS OF TOLERANCE THRESHOLDS;

(c) MASKING WHEN INDICATED;

(d) RECORDING AND EVALUATION OF AUDIOGRAMS AND SPEECH AUDIOMETRY TO DETERMINE PROPER SELECTION AND ADAPTION OF A HEARING INSTRUMENT;

(e) TAKING EAR MOLD IMPRESSIONS; AND

(f) USING AN OTOSCOPE OR AN EQUIVALENT ILLUMINATOR FOR THE VISUAL OBSERVATION OF THE ENTIRE EAR CANAL.

It is necessary to include tests of practical proficiency of the above-listed techniques because all are commonly used and/or required in the testing of human hearing and fitting of hearing instruments. Also, Health Department staff has found that the above listed items (with the exception of the otoscope item) are common elements in the licensing examinations of several

other states including North Dakota, South Dakota, Iowa, Wisconsin, Michigan, California, and Florida. South Dakota and Iowa may not include a requirement that an otoscope be used in the practical portion of their examinations. It is reasonable to require that applicants for registration as hearing instrument dispensers be proficient in the listed techniques because use of the protected titles is a representation to the public that a person has met minimum standards set by Commissioner and is therefore entitled to the exclusive use of the titles. The listed techniques are some of the minimum standards the applicant must meet.

B. THE EXAMINATION SHALL BE ADMINISTERED BY THE COMMISSIONER AT LEAST TWICE A YEAR.

It is necessary and reasonable to administer the entry examinations more than once a year to allow applicants for registration more than one opportunity to be tested in case personal schedule conflicts arise. It is also necessary to provide that the Commissioner will administer the exam to allow flexibility in the type of exam that may be offered. Exams are available from a variety of sources. The wording of this item allows the Commissioner to have the testing administered by a private agency, for example, but also allows the Commissioner to administer the examination.

C. APPLICANTS MUST SUBMIT THE APPLICATION AND EXAMINATION FEE REQUIRED UNDER PART 4745.0050, SUBPART 4, TO THE COMMISSIONER AT LEAST 60 DAYS BEFORE THE DATE SET FOR THE EXAMINATION.

The examination fee requirement is necessary to cover the actual cost of administering the examination because the authorizing statute, as explained above under part 4745.0050, requires the registration system to be entirely fee supported. It is necessary to submit the application and the fee to the

commissioner at least 60 days before the date set for the examination to allow sufficient time for processing of the applications and arranging testing facilities, if necessary. It is reasonable to require the applications and fee be submitted together and within the time stated because it is most practical and is not overly burdensome to the applicant.

Subp. 3. REGISTRATION BY RECIPROCITY. AN APPLICANT MAY BE REGISTERED AS A HEARING INSTRUMENT DISPENSER BY RECIPROCITY, ACCORDING TO ITEMS A AND B.

A. WHENEVER THE COMMISSIONER DETERMINES THAT AN APPLICANT HOLDS A CURRENT AND UNRESTRICTED CREDENTIAL FOR HEARING INSTRUMENT SELLING IN ANOTHER JURISDICTION THAT HAS REQUIREMENTS EQUIVALENT TO OR HIGHER THAN THOSE IN EFFECT FOR DETERMINING WHETHER APPLICANTS IN THIS STATE ARE QUALIFIED TO BE REGISTERED AS HEARING INSTRUMENT DISPENSERS, THE COMMISSIONER MAY REGISTER THE APPLICANT WITHOUT THE APPLICANT MEETING THE REQUIREMENTS OF SUBPART 2, PROVIDED THAT THE APPLICANT OTHERWISE MEETS ALL OTHER REQUIREMENTS OF PARTS 4745.0010 TO 4745.0060.

It is necessary to make a reciprocity provision in these rules in order to accommodate people coming to Minnesota from other jurisdictions. It is reasonable to limit this method of registering to those who hold a current credential for hearing instrument selling in jurisdictions where requirements equivalent to or higher than those in effect in this state exist. It is reasonable to give reciprocity status to such people because doing so will eliminate testing those who have already met minimum competency standards in other jurisdictions. It is reasonable because testing again could be superfluous and cause unnecessary expenditures of resources. This provision is reasonable because it limits reciprocity to people who have met minimum requirements for hearing instrument selling that are equal to or higher than those set by these rules.

B. AN APPLICANT FOR REGISTRATION BY RECIPROCITY UNDER ITEM A, MUST HAVE

THE APPROPRIATE GOVERNMENT BODY IN EACH JURISDICTION IN WHICH THE APPLICANT HOLDS A CREDENTIAL SUBMIT LETTERS OF VERIFICATION TO THE COMMISSIONER. EACH LETTER MUST STATE THE APPLICANT'S NAME, SOCIAL SECURITY NUMBER, DATE OF BIRTH, CREDENTIAL NUMBER, DATE OF ISSUANCE, A STATEMENT REGARDING DISCIPLINARY ACTIONS, IF ANY, TAKEN AGAINST THE APPLICANT, AND WHETHER THE CREDENTIAL WAS ISSUED BY EXAMINATION.

It is necessary that the procedures and duties involved with registration by reciprocity be set out to inform applicants what is expected of them. The applicant is responsible for requesting other jurisdictions to provide credentialing evidence to the Commissioner. This reduces administrative costs for the Department of Health. The information required to be included in the letter of verification is necessary because it is the minimum information needed to identify the applicant and to judge eligibility for reciprocity privileges.

It is reasonable that the applicant have the responsibility of providing credential information needed to qualify for reciprocity because it places the duty on the party who seeks to benefit from the reciprocity and who should have direct access to the necessary records from other jurisdictions. The information should be more accessible to the applicant than the Commissioner. It is not excessive or overly intrusive, considering that it is the minimum information necessary for the Commissioner to judge eligibility for reciprocity.

Subp. 4. REGISTRATION FOLLOWING LAPSE OF REGISTERED STATUS OF TWO YEARS OR LESS. FOR ANY APPLICANT WHOSE REGISTERED STATUS HAS LAPSED FOR TWO YEARS OR LESS, THE APPLICANT MUST:

A. APPLY FOR REGISTRATION ACCORDING TO PART 4745.0040, SUBPARTS 1 AND 2;

B. DOCUMENT COMPLIANCE WITH CONTINUING EDUCATION REQUIREMENTS SINCE THE APPLICANT'S REGISTRATION LAPSED; AND

C. PAY THE CURRENT RENEWAL FEE.

This subpart allows people whose registration has lapsed for two years or less to regain registration status by applying for registration, documenting compliance with continuing education requirements since the registration lapsed, and paying the current renewal fee. The subpart is necessary because it would not be clear that an applicant, as described in this subpart, would be exempt from the examination requirement without explicitly stating so in the rules. It is necessary to require the applicant to apply in order to put the Department on notice of the request for registration. It is necessary to require that continuing education requirements during the time of lapsed registration be met as a prerequisite of registration because it provides tangible evidence of maintenance of competency in the occupation that may not otherwise exist. The current renewal fee is necessary because the registration system is required to be entirely fee supported by Minnesota Statutes, sections 214.06, 214.13 and 16A.128. The period of two years or less is reasonable because it would be excessive to require that all the minimum requirements of registration be met prior to allowing renewal of registration when the lapse has been for a shorter period of time. Two years is reasonable as an amount of time to presume that registration can lapse without competence being lost. The requirement to fulfill continuing education requirements during the time of lapsed registration is reasonable because it provides the Commissioner with some method of knowing that the applicant has continued to keep in contact with the occupation. The requirement to pay the current renewal fee is reasonable because an applicant

in the situation described by this provision causes the Department to incur administrative costs as would any other registrant. The required fee is only in the amount which is required to cover costs for administering the registration system for the described registrant.

Subp. 5. REGISTRATION FOLLOWING LAPSE OF REGISTERED STATUS OF MORE THAN TWO YEARS. FOR ANY APPLICANT WHOSE REGISTERED STATUS HAS LAPSED FOR MORE THAN TWO YEARS, THE APPLICANT MUST:

A. FULFILL THE REQUIREMENTS FOR REGISTRATION IN SUBPARTS 1 AND 2; OR

B. FULFILL THE REQUIREMENTS OF SUBPART 3.

It is necessary to put applicants on notice that certain requirements need to be met after registration has lapsed for more than two years. This subpart informs applicants that meeting the minimum examination requirements the first time one registers does not entitle the applicant to registration thereafter when lapses in registered status of more than two years have occurred. The subpart allows the applicant to meet the minimum requirements for registration by examination or reciprocity. Requiring registration by examination or reciprocity, after lapse in registered status, is necessary to establish that practitioners have not lost minimum competency.

The notice portion of this subpart is reasonable because it clearly identifies the applicants affected. Further, it is reasonable because registration by examination or reciprocity is an acceptable means of achieving registered status for new registrants and there is no basis in fact for treating the registrants described in this provision any differently.

4745.0030 TEMPORARY REGISTRATION REQUIREMENTS.

Subpart 1. TEMPORARY REGISTRATION REQUIREMENTS. AN APPLICANT FOR REGISTRATION NEED NOT COMPLY WITH THE REQUIREMENTS OF PART 4745.0025 SUBPART 2, FOR TWO YEARS AFTER THE EFFECTIVE DATE OF PARTS 4745.0010 TO 4745.0060 IF, AT THE TIME OF APPLICATION, THE APPLICANT PROVIDES THE COMMISSIONER WITH EVIDENCE THAT THE APPLICANT HAS ENGAGED IN ACTIVE PRACTICE.

This subpart explains that people who apply for registration may be excused from the examination requirements for two years after the effective date of the rules if, when they register, they can provide evidence that they were engaged in hearing instrument selling for 750 hours per year for three of the last five years. Several reasons make it necessary to accommodate sellers, who can give satisfactory evidence of minimum competency earned through practice experience, during the transition period and until testing procedures are in place. First, during this time, sellers may be ready and willing to register but all the administrative systems regarding testing may not be ready. Second, this time period is necessary to give sellers who have never taken a minimum entry examination opportunity to study for the examination. The two year time period is reasonable because it should be sufficient time to set up the testing procedure as well as sufficient study time for applicants. It is necessary to provide some method for judging minimum competence before the examination procedure is ready. Using work experience as evidence of entry level competence is also reasonable because hearing instrument sellers who have been involved in active practice are likely to be sufficiently competent due to the work experience and more likely to be competent than those who have no work experience.

Subp. 2. EXAMINATION REQUIREMENT. AFTER THE TIME FOR TEMPORARY REGISTRATION HAS EXPIRED, ALL APPLICANTS MUST MEET THE REQUIREMENTS OF PART

4745.0025, SUBPART 2.

This subpart puts registrants and applicants on notice that the temporary registration requirement described in Subpart 1 above is in fact temporary and that all registrants and applicants will be required to take the examination within two years of the effective date of the rules. It is necessary to give this notice so as not to mislead those who seek registration under subpart 1 by informing them that temporary requirements are time limited.

It is reasonable to eventually require all applicants to pass an examination meeting the requirements of these rules, because one of the functions of the registration system is to set uniform minimum qualifications. An examination is one acceptable method of determining the meeting of uniform minimum qualifications. The two year time period is reasonable because it allows people sufficient time to prepare for the examination.

Subp. 3. NOTIFICATION OF APPLICANTS. THE COMMISSIONER SHALL NOTIFY APPLICANTS FOR REGISTRATION OF THE EFFECTIVE DATE OF PARTS 4745.0010 TO 4745.0060 AND THE DATE ON WHICH REGISTRATION BY EXAMINATION IS REQUIRED.

It is necessary to notify applicants of the effective date of the rules and the date when examination is required to avoid confusion that may develop if the dates are not provided to applicants. It is reasonable to place this responsibility on the Commissioner because it is information readily available to the Commissioner rather than the applicants who may not be aware of the information or how to find the information.

4745.0035 REGISTRATION PROCEDURES.

Subpart. 1. APPLICATIONS FOR REGISTRATION. ALL APPLICANTS FOR REGISTRATION MUST:

A. SUBMIT A COMPLETED APPLICATION FOR REGISTRATION ON FORMS PROVIDED BY THE COMMISSIONER. THE APPLICATION MUST INCLUDE THE APPLICANT'S NAME, SOCIAL SECURITY NUMBER, BUSINESS ADDRESS AND PHONE NUMBER, OR HOME ADDRESS AND PHONE NUMBER IF THE APPLICANT CONDUCTS HEARING INSTRUMENT SELLING OUT OF THE HOME, AND A DESCRIPTION OF THE APPLICANT'S EDUCATION, TRAINING, AND EXPERIENCE, INCLUDING PREVIOUS WORK HISTORY. THE COMMISSIONER MAY ASK THE APPLICANT TO PROVIDE ADDITIONAL INFORMATION NECESSARY TO CLARIFY INFORMATION SUBMITTED IN THE APPLICATION;

It is necessary to set out the requirements for the application forms because these requirements are the minimum necessary for an application for registration to be considered by the Commissioner. It is necessary and reasonable that only forms provided by the Commissioner can be used by the applicant because use of one type of application form establishes uniformity in the information requested from all of the applicants.

It is necessary to collect the information requested in order to adequately identify the applicant, provide means to contact the applicant regarding anything that may affect his or her registered status, and provide the Commissioner with some knowledge of the applicant's skills, education and experience. It is necessary and reasonable that the Commissioner have all relevant information available on the applicant because such information may be necessary to help resolve any complaints against registrants and to help determine which disciplinary action, if any, is most appropriate to the applicant.

It is necessary to require the applicant to provide additional information for clarification because an incomplete application form would not provide for a functional registration system. It is reasonable to require completeness to ensure uniformity in the information supplied by all applicants. If completeness were not a requirement, applicants could provide

the Commissioner with insufficient or different types of information. Information that is not uniform would create problems for effective and equal administration of the registration system, especially regarding registration eligibility and discipline. The Department of Health, consumers and registrants have an interest in the fair and equal administration of these rules.

B. SIGN A STATEMENT THAT THE INFORMATION IN THE APPLICATION IS TRUE AND CORRECT TO THE BEST OF THE APPLICANT'S KNOWLEDGE AND BELIEF;

This provision is necessary because it forms the basis for the Commissioner's decision on whether or not to register the applicant. It is a reasonable requirement because without a sworn statement by the applicant, the Commissioner would not have justifiable and reliable information on which to base her decision on whether or not to register the applicant.

C. SUBMIT WITH THE APPLICATION ALL FEES REQUIRED BY PART 4745.0050;

The fee provision is necessary because the authorizing statute requires that the registration system be entirely fee supported. See Minnesota Statutes, sections 214.06, 214.13 and 16A.128. It is reasonable to require that the application fee be submitted with the application because the fee will be used to reimburse the state for the costs of administering the registration system.

D. SIGN A WAIVER AUTHORIZING THE COMMISSIONER TO OBTAIN ACCESS TO THE APPLICANT'S RECORDS IN THIS STATE OR ANY OTHER STATE IN WHICH THE APPLICANT HAS ENGAGED IN HEARING INSTRUMENT SELLING;

This provision is necessary because the Commissioner has an interest in verifying the records of an applicant with previous practice experience.

If the Commissioner needs to investigate an applicant, the waiver will provide the Commissioner with access to records which will enable an investigation to be done. The waiver also provides the applicant with notice that the Commissioner may investigate his or her hearing instrument selling background. This requirement is reasonable because the purpose of the registration system is to assure the consumer that registered sellers meet a set of state qualifications. Without the means to thoroughly investigate applicants when necessary, the Commissioner may not have assurance that a dispenser is a person who is qualified under the registration system.

E. PROVIDE EVIDENCE OF A PASSING SCORE AS DETERMINED BY THE COMMISSIONER ON AN APPROVED EXAMINATION AS DESCRIBED IN PART 4745.0025; AND

It is necessary to provide evidence of a passing score on an examination approved by these rules because one of the functions of the registration system is to establish minimum qualifications. Passing the described examination is one method of separating those applicants who meet minimum qualifications from those who do not. An examination is a reasonable method to determine the meeting of minimum qualifications because it is a commonly accepted method of evidencing qualifications as explained in this Statement under part 4745.0025.

F. PROVIDE CERTIFICATION TO THE COMMISSIONER THAT THE APPLICANT'S AUDIOMETRIC EQUIPMENT HAS BEEN CALIBRATED WITHIN TWELVE MONTHS OF THE DATE OF THE APPLICATION.

This item is necessary and reasonable for the same reasons set out under part 4745.0025 subpart 1, item C of this Statement.

Subp. 2. ACTION ON APPLICATIONS FOR REGISTRATION. THE COMMISSIONER SHALL ACT ON AN APPLICATION FOR REGISTRATION ACCORDING TO ITEMS A TO C.

A. THE COMMISSIONER SHALL DETERMINE IF THE APPLICANT MEETS THE REQUIREMENTS FOR REGISTRATION. THE COMMISSIONER OR ADVISORY COUNCIL MAY INVESTIGATE INFORMATION PROVIDED BY AN APPLICANT TO DETERMINE WHETHER THE INFORMATION IS ACCURATE AND COMPLETE.

This provision is necessary to put applicants on notice that the Commissioner will determine whether they meet the requirements needed to register. It is reasonable to have the Commissioner responsible for the determination because the Commissioner can use the advisory council's expertise regarding the issue of whether applicants meet the requirements for registration.

This provision is also necessary to put applicants on notice that information supplied in an application for registration may be investigated by the Commissioner or advisory council. It is necessary that the Commissioner investigate information supplied on applications because she has an obligation to the citizens of Minnesota to verify the record of an applicant's past practice and/or education and training. The Commissioner has the authority to delegate the administration of regulation activities. Minnesota Statutes, section 214.13, subdivisions 4 and 7. However, by delegating authority the Commissioner does not thereby give up any of her own authority. Delegation does not remove the Commissioner's authority to make final decisions regarding registration and regulation of an occupation. The authority of the advisory council is only advisory pursuant to Minnesota Statutes, section 214.13, subdivision 4. Therefore, this rule provides that either the commissioner or the advisory council may investigate. The definition of "commissioner" as set out in part 4745.0010, subpart 6, also refers to the Commissioner's designee outside or inside the Department of Health. Therefore, the investigation

could be performed by a staff person as well as the advisory council.

This requirement is reasonable because one of the purposes of the registration system is to strengthen consumer protection. The exclusive use of the titles protected by the registration system should only be given to those who rightfully deserve the privilege. The privilege of using the protected title should not be available to those who do not meet the minimum standards set out in these rules or to those who have engaged in activities that give the Commissioner cause to believe that the applicant should not be registered. Investigation, provided by this rule, will help promote consumer protection.

B. THE COMMISSIONER, WITHIN 60 DAYS OF RECEIVING AN APPLICATION FOR REGISTRATION, SHALL NOTIFY EACH APPLICANT OF ACTION TAKEN ON THE APPLICATION AND OF THE GROUNDS FOR DENYING REGISTRATION IF REGISTRATION IS DENIED.

This provision is necessary to give applicants notice of the time period that may pass before they are notified of the approval or denial of their application for registration. The provision also gives applicants the ability to review reasons given for denial of registration. The time period allowed, 60 days, is necessary in order to complete the administrative duties and investigation, if any, regarding applications for registration.

This rule is reasonable because an applicant who seeks to be registered would have great difficulty appealing a denial without knowing the specific grounds for denial of their application for registration. Also, the time period is reasonable because it provides for sufficient time to complete a fair review of applications but is not so long as to be a burden on the applicants.

C. APPLICANTS DENIED REGISTRATION MAY MAKE A WRITTEN REQUEST TO THE COMMISSIONER, WITHIN 30 DAYS OF THE COMMISSIONER'S DETERMINATION, TO APPEAR BEFORE THE ADVISORY COUNCIL AND FOR THE ADVISORY COUNCIL TO REVIEW THE COMMISSIONER'S DECISION TO DENY THE APPLICANT'S REGISTRATION. AFTER REVIEWING THE DENIAL, THE ADVISORY COUNCIL SHALL MAKE A RECOMMENDATION TO THE COMMISSIONER. EACH APPLICANT IS ALLOWED NO MORE THAN ONE REQUEST FOR A REVIEW OF DENIAL OF REGISTRATION IN ANY ONE REGISTRATION RENEWAL PERIOD.

It is necessary to put applicants on notice of their right to make a written request to appear before the advisory council and for review by the advisory council when registration has been denied. Part 4745.0060, subpart 3, items A and D defines, as duties of the advisory council, advising the Commissioner about hearing instrument dispenser registration standards and recommending applicants for registration or renewal. Therefore, it is necessary that the advisory council be responsible for the review defined by this rule.

It is also necessary to put applicants on notice that their right to make the request for review has a time limit of 30 days from the date of the Commissioner's decision to deny the applicant's request for registration. Applicants must know what time limit applies to the request to be fully aware of their rights under the registration system.

The rule is reasonable because denial of registration may be considered so consequential to some applicants as to warrant a request for a review before the advisory council. It is reasonable to have the advisory council responsible for the review because its members will, together, have the specialized knowledge to make a fair recommendation to the Commissioner. The time limit of 30 days from the date of the Commissioner's decision is reasonable because it allows ample time for the applicant to consider whether

to make a request for a review and to prepare such a request.

It is necessary and reasonable to state in the rule that the advisory council is required to make a recommendation to the commissioner after reviewing the denial because the rule provides applicants with information about the process and consequences of the review. The rule also clearly sets out that the advisory council must take action following the review in the form of a recommendation to the commissioner.

It is necessary to put applicants on notice that their right to request a review before the advisory council is limited to one review in any one registration renewal period. If such a limitation were not placed on the right to request and have a review, one applicant could unreasonably take up the time and attention of the advisory council to the disadvantage of other applicants and registrants who may require the advisory council's time on other issues. The limitation is reasonable because it allows an opportunity for review to any applicant, who has been denied registration, yet does not allow one applicant to monopolize the time of the advisory council.

4745.0040 REGISTRATION RENEWAL.

Subpart 1. RENEWAL REQUIREMENTS. TO RENEW REGISTRATION AN APPLICANT MUST:

A. ANNUALLY COMPLETE A RENEWAL APPLICATION ON A FORM PROVIDED BY THE COMMISSIONER AND SUBMIT THE ANNUAL RENEWAL FEE.

This provision is necessary to give applicants notice that registration must be renewed each year. It is necessary to use forms provided by the Commissioner to ensure uniformity of information received. It is necessary to

require a renewal fee because the registration system is required by Minnesota Statutes, sections 214.06, 214.13 and 16A.128, to be entirely fee supported. Administrative costs will be ongoing, therefore a fee is necessary to cover the costs of supporting the registration system.

A registration fee, on an annual basis, is necessary for several reasons. Health Department staff considered biennial registration renewal, and therefore, a biennial registration fee for hearing instrument dispensers. Such a system would be unworkable, at least initially, for several reasons. As stated above, the registration system is required to be entirely fee supported. There are two types of costs that are incurred in developing and administering a registration system that must be recovered through a fee system paid by the registrants. First, the costs of developing and adopting the rules to establish the registration system must be recovered by having the registrants pay a surcharge fee over a five-year period. Second, the costs of administering the registration system, once in place, must be recovered by having the registrants pay a registration fee.

Minnesota Statutes, section 214.06, subdivision 1 states in part:

> For members of an occupation registered after July 1, 1984 by the commissioner of health under the provisions of section 214.13, the fee established must include an amount necessary to recover, over a five-year period, the commissioner's direct expenditures for adoption of the rules providing for registration of members of the occupation. [Emphasis added.]

Minnesota Statutes, section 214.06, subdivision 1, requires the Commissioner to establish a surcharge fee, to be collected over a five-year period, to cover the costs of developing and promulgating rules for the registration system.

Minnesota Statutes, section 16A.128, subdivision 1a., states in part:

> [F]ees must be set or fee adjustment must be made so the total fees nearly equal the sum of the appropriation for the accounts plus the agency's general support costs, statewide indirect costs, and attorney general costs attributable to the fee function.

Minnesota Statutes, 16A.128, subdivision 1a., requires the fees to cover the ongoing costs of administering the registration system.

Minnesota Statutes, section 214.06, subdivision 1, does not define the exact method for collecting the surcharge fee, other than to state that it should be collected over a five-year period. The surcharge fee could be collected "over a five-year period", but need not be on an annual basis. For example, the surcharge fee could be assessed at the initial registration and again at five years after the effective date of the rules. If the surcharge fee were collected twice and the second collection was not in the fifth year, the surcharge fee would not be collected "over a five-year period." During the same five year period when the surcharge fee was assessed twice, the biennial registration renewal would occur twice, at two and four years after the initial registration. This plan would require at least one of the surcharge fees to be collected at a separate time from the registration fee in order to meet the requirement of recovering the costs of rulemaking over a five-year period. Collecting the surcharge fees in the described way could be a means of meeting the requirements of Minnesota Statutes, section 214.06, subdivision 1, which requires the rulemaking costs to be recovered "over a five-year period". The characteristic of having to assess fees three times in a five-year period would lessen the advantages of a biennial renewal

system.

Alternative means of fee collection could be developed for collecting the surcharge fee over a five-year period and maintaining biennial registration. However, any method devised, which meets the requirement of Minnesota Statutes, section 214.06, subdivision 1, that it be "over a five-year period," will necessitate at least one fee to be collected separately from the other.

If the surcharge fee were to be collected only twice in a five-year period, the surcharge fee would have to be two and one-half times the proposed annual surcharge fee. The costs of rulemaking for the hearing instrument dispenser registration system is an estimated but fixed number ($35,174.00, see part 4745.0045, subpart 5). The cost of rulemaking does not change if the surcharge fee to recover the costs is recovered in a method other than annually. The proposed annual surcharge fee, as set out in part 4745.0050, subpart 5 is $35.00. If the surcharge fee is to be collected only twice over a five-year period and the number of registrants remains the same as the proposed budget anticipates, the surcharge fee would be $87.50 each time. To recover the costs of $35,174.00 by using two surcharge fees over a period of five years with 200 registrants paying the surcharge fees the following formula would be used to determine the amount: $35,174.00/2 = $17,587.00/200 = $87.94. $87.94 would be rounded to $88.00. The number varies slightly from $87.50 ($35.00 x 2.5 = $87.50) because the $35.00 figure was obtained by rounding the number of $35.17 down. See part 4745.0050, subpart 5.

A surcharge fee in the amount of $87.50 or $88.00 plus the proposed yearly registration fee of $93.00, set out in part 4745.0050, subpart 2,

equals $180.50 or $181.00. The combined fees of $180.50 or $181.00 may be a burden on the registrants. It should be noted that a biennial registration fee would also be higher than the annual registration fee. As explained below, many of the costs of administering the registration system will occur annually even if the actual registration and registration renewal takes place every two years. Therefore, the combined surcharge fee and biennial registration fee would likely be greater than $181.00.

The proposed budget sets out expenses that will occur on an annual basis, regardless of the time periods of registration. Monthly meetings are expected for the advisory council for the first six months of the registration system and quarterly meetings are planned thereafter. Staff and attorney general costs are not planned on an hourly or part-time basis but on an annual schedule. Health department staff anticipates that the advice of the advisory council will be needed on a regular basis as the registration system gets underway. Also, it is expected that staff time will be needed to a greater extent at the start-up of the registration system than it will be several years after the registration system has been in place.

The proposed annual administration budget also includes costs for enforcement activities. Health department staff anticipate that a minimum of annual communication with the registrant group will be required to fully inform registrants of their responsibilities and rights pursuant to the registration system. Due to all the annual costs described, a biennial registration fee would not be significantly smaller than an annual registration fee because the two fees must cover the necessary expenses for

the administration of the registration system. Therefore, an annual registration fee seems to be a more logical way to initiate the registration system.

The registration system is a voluntary means of regulation. There is no way to foresee the exact number of registrants. Budgets have been developed incorporating estimates the Health Department staff believes to be conservative. However, the actual numbers of registrants will only be known once the system is underway. A yearly surcharge and registration fee will allow the flexibility needed to deal with fluctuation in numbers of registrants and changing needs of the registered group as a whole. A biennial registration system with fees collected twice over a five-year period would not allow the needed flexibility that an annual surcharge and registration fee will provide.

It is reasonable to require annual renewal for several reasons. One year is a practical period of time for the administration of applications. The authorizing statute for collection of the surcharge fee, Minnesota Statutes, section 214.06, subdivision 1, appears to anticipate an annual surcharge fee over a five-year period. Although other methods might be devised for the collection, as explained above, no method is as workable as an annual surcharge and registration fee. If annual collection of the surcharge fee and registration fee is not implemented initially, other collection methods may likely cause financial hardship to the registrants. Annual registration renewal provides for an annual update of information on the registrants and provides relatively close contact with the registrants. Finally, two of the

four registration systems existing in Minnesota provide for annual renewal of registration. Physical therapists and physician assistants are occupational groups that require annual renewal of registration. Environmental health specialists/sanitarians and emergency medical technicians and paramedics have biennial registration periods. Both of the biennially registered groups were registered before the July 1, 1984 date set out in Minnesota Statutes, 214.06, subdivision 1, which requires the surcharge fee to be assessed over a five-year period to recover the costs of rulemaking. Other regulated occupations in Minnesota have an annual renewal of their credential including physicians, chiropractors, dentists, marriage and family therapists, optometrists, pharmacists, and podiatrists. For all of the reasons stated above this rule is reasonable.

B. MEET THE CONTINUING EDUCATION REQUIREMENTS OF PART 4745.0045; AND

This part is necessary because the rules require registrants to fulfill continuing education requirements. It is reasonable to utilize the renewal process as a vehicle to verify that continuing education requirements have been met because it allows two functions of the registration system to be completed simultaneously.

C. SUBMIT CERTIFICATION TO THE COMMISSIONER THAT THE APPLICANT'S AUDIOMETRIC EQUIPMENT HAS BEEN CALIBRATED WITHIN 12 MONTHS OF THE DATE OF THE APPLICATION.

This rule is necessary and reasonable for the same reasons given under part 4745.0025, subpart 1, item C.

Subp. 2. OTHER REQUIREMENTS.

A. AN APPLICANT MUST SUBMIT ADDITIONAL INFORMATION IF REQUESTED BY THE COMMISSIONER TO CLARIFY INFORMATION PRESENTED IN THE RENEWAL APPLICATION. THE

INFORMATION MUST BE SUBMITTED WITHIN 30 DAYS OF THE COMMISSIONER'S REQUEST.

The reasoning given under part 4745.0035, subpart 1, item A, and part 4754.0055, subpart 3, item B, is also applicable here as applied to renewal applications. It is necessary to state that the applicant must submit the information requested within 30 days of the date of the Commissioner's request to be consistent with the Part 4745.0055, subpart 3, item B.

B. AN APPLICATION SUBMITTED AFTER THE RENEWAL DEADLINE DATE MUST BE ACCOMPANIED BY A LATE FEE AS REQUIRED IN PART 4745.0050, SUBPART 3.

It is necessary to require a late fee for renewal applications submitted after the renewal deadline date as an incentive to applicants to renew registration on a timely basis. It is reasonable to require a late fee as described in this provision because the registration system will run more efficiently and therefore more economically if the great majority of applications are submitted on a timely basis. Providing some incentive in the form of a late fee penalty helps to promote the smooth administration of the registration system.

Subp. 3. REGISTRATION RENEWAL NOTICE. REGISTRATION RENEWAL IS ON AN ANNUAL BASIS. AT LEAST 30 DAYS BEFORE THE REGISTRATION RENEWAL DATE IN SUBPART 4, THE COMMISSIONER SHALL SEND OUT A RENEWAL NOTICE TO THE REGISTRANT'S LAST KNOWN ADDRESS. THE NOTICE SHALL INCLUDE A RENEWAL APPLICATION AND NOTICE OF FEES REQUIRED FOR RENEWAL. IF THE REGISTRANT DOES NOT RECEIVE THE RENEWAL NOTICE, THE REGISTRANT IS STILL REQUIRED TO MEET THE DEADLINE FOR RENEWAL TO QUALIFY FOR CONTINUOUS REGISTERED STATUS.

This subpart provides that the registration period is one year long and is necessary in order to inform applicants and registrants of the effective dates of registration. This duration is reasonable because the Commissioner needs to have updated information on a regular basis about the registrants within her regulatory jurisdiction. Annual renewal will ensure current

information about registrants without creating an unreasonable burden on them. The Commissioner will give notice that registration is due for renewal, but the registrant has an obligation to renew registration according to the schedule without being reminded. This rule informs registrants that even though the Commissioner will be providing notices that renewal is due, they are ultimately responsible for following the renewal schedule if they desire continuous registered status. This is necessary to put registrants on notice of their duties. It is reasonable because although the purpose of the notice mailing by the Commissioner is to encourage prompt renewal, the Commissioner cannot guarantee that each registrant will actually receive the notice that is mailed.

Subp. 4. RENEWAL DEADLINE. THE RENEWAL APPLICATION AND FEE MUST BE POSTMARKED ON OR BEFORE THE DATE REGISTRATION MUST BE RENEWED ACCORDING TO ITEMS A TO E. REGISTRATION MUST BE RENEWED ACCORDING TO THE FOLLOWING SCHEDULE:

A. FOR REGISTRANTS WHOSE LAST NAME BEGINS WITH THE LETTERS A TO E, FEBRUARY 1;

B. FOR REGISTRANTS WHOSE LAST NAME BEGINS WITH THE LETTERS F TO L, APRIL 1;

C. FOR REGISTRANTS WHOSE LAST NAME BEGINS WITH THE LETTERS M TO P, JUNE 1;

D. FOR REGISTRANTS WHOSE LAST NAME BEGINS WITH THE LETTERS Q TO U, AUGUST 1; AND

E. FOR REGISTRANTS WHOSE LAST NAME BEGINS WITH THE LETTERS V TO Z, OCTOBER 1.

This subpart sets out the renewal schedule for registrants. The schedule allows for a staggered receipt of applications. It is necessary to inform registrants of the renewal schedule so that they can anticipate when they will

be required to renew registration. It is reasonable to stagger the schedule to prevent all of the renewal applications from being submitted at one time and causing delays in their review. This schedule provides the Commissioner with an adequate amount of time to review applications, investigate them, obtain further information if necessary, and issue registration within an appropriate amount of time and without undue delay.

4745.0045 CONTINUING EDUCATION REQUIREMENTS.

Subpart 1. NUMBER OF CONTACT HOURS REQUIRED.

A. AN APPLICANT FOR REGISTRATION RENEWAL MUST PROVIDE EVIDENCE TO THE COMMISSIONER OF A MINIMUM OF 20 CONTACT HOURS OF CONTINUING EDUCATION OFFERED BY AN APPROVED CONTINUING EDUCATION SPONSOR WITHIN THE TWO YEARS PRECEDING REGISTRATION RENEWAL.

It is necessary to require continuing education requirements to provide some tangible method of ensuring that registrants participate in activities designed to promote continuing competency in the procedures and techniques of hearing instrument selling and fitting. Continuing education requirements are reasonable because continuing education is a prevalent method used by many occupations to help promote continuing competency. In Minnesota, many occupations require continuing education as a prerequisite to credential renewal. Some of the occupations that have a continuing education requirement are: Medicine, Nursing, Dentistry, Optometry, Pharmacy, Environmental Health Specialists/Sanitarians, and Physician Assistants.

Twenty hours over a two year period is also a reasonable requirement. The December, 1988 issue of "Hearing Instruments" included a survey of several

aspects of state hearing aid licensing. At that time seven states (Alaska,, Colorado, Delaware, Hawaii, Massachusetts, Minnesota and Vermont) did not have licensing, one state (New York) had registration and the balance of the states (42) had licensing. Continuing education requirements were required in 29 of the 43 states that licensed hearing aid dispensers in 1988. The amount of education required ranged from a low of four hours per year, in Montana, to a high of sixteen hours per year in Iowa. "Licensing, continuing education and the professional dispenser," by Karen S. Cranmer, "Hearing Instruments," Vol. 39, No. 12, 1988, pp. 16 - 18. See also, "1984 Guide to State Hearing Aid & Audiology Licensing" by William J. Mahon, "The Hearing Journal," March 1984 pp. 29 - 36. These facts are further evidence of the reasonableness of requiring continuing education as a condition of credential renewal for hearing instrument dispensers.

The decision to require 20 contact hours over a two year period was also influenced by the realization that although the bulk of registered hearing instrument dispensers will be located in the Twin City area, many registrants will be traveling from areas in Greater Minnesota to fulfill continuing education requirements. The Commissioner believes that 20 contact hours could be completed in four day-long sessions and still account for travel time of many registrants. For these reasons the provision is reasonable.

B. CONTACT HOURS CANNOT BE ACCUMULATED IN ADVANCE AND TRANSFERRED TO A FUTURE CONTINUING EDUCATION PERIOD.

It is necessary to state in the rules that registrants cannot accumulate extra contact hours of approved continuing education with the intent to fulfill future obligations in order to put registrants on notice. This

provision is reasonable because, as stated above, one of the functions of continuing education is to keep registrants current on occupational changes. Allowing future obligations to be fulfilled in a current renewal year would frustrate that purpose.

Subp. 2. PREAPPROVED CONTINUING EDUCATION SPONSORS. THE COMMISSIONER WILL ACCEPT CONTINUING EDUCATION APPROVED OR SPONSORED BY THE MINNESOTA DEPARTMENT OF HEALTH, THE MINNESOTA HEARING AID SOCIETY, THE NATIONAL HEARING AID SOCIETY, THE NATIONAL INSTITUTE OF HEARING INSTRUMENT STUDIES, THE MINNESOTA SPEECH-LANGUAGE-HEARING ASSOCIATION, THE AMERICAN SPEECH-LANGUAGE-HEARING ASSOCIATION, OR THE ACADEMY OF DISPENSING AUDIOLOGISTS.

This subpart lists some organizations that may offer continuing education courses to hearing instrument dispensers and states that continuing education offered by these organizations is preapproved. It is necessary to provide registrants with some choices for approved sponsors of continuing education to simplify the administration of the continuing education requirement. Under the wording of this rule, the Commissioner reserves some control over the preapproved sponsors by including part 4745.0045, subpart 3, item E. Subpart 3, item E, allows the Commissioner to withdraw approval of any sponsor for failure to comply with the provisions of this part. Except for the Minnesota Department of Health, all of the organizations listed currently provide continuing education that is relevant to sellers and fitters of hearing instruments. The Minnesota Department of Health may sponsor seminars to provide registrants with information about the registration system and other regulation of hearing instrument dispensers.

It is reasonable to name the listed organizations as sponsors of continuing education because the Minnesota Hearing Aid Society, the National Hearing Aid Society, and the National Institute of Hearing Instrument Studies

are organizations composed of hearing instrument sellers and all have offered continuing education courses to their members in the past. At the present time, the National Hearing Aid Society (NHAS) and the National Institute of Hearing Instrument Studies make continuing education courses available to hearing instrument sellers across the country. The Minnesota Hearing Aid Society (MHAS) is a chapter of the National Hearing Aid Society. As a chapter of the National group, MHAS can act as a host for NHAS sponsored continuing education courses.

Health Department staff has been informed by members of the occupational group as well as members of the American Speech-Language-Hearing Association, the Minnesota Speech-Language-Hearing Association, and the Academy of Dispensing Audiologists, that it would be reasonable to preapprove all the named associations and groups because each offers continuing education that is relevant and helpful to people who are in the business of hearing instrument selling. As stated above, preapproval of continuing education sponsors will provide more continuing education opportunities to the registrants and lessen the administrative burden of the commissioner and advisory council, by eliminating the need to go through the approval process for some continuing education sponsors.

Subp. 3. APPROVAL OF CONTINUING EDUCATION SPONSORS. ALL CONTINUING EDUCATION SPONSORS MUST BE APPROVED BY THE COMMISSIONER ACCORDING TO ITEMS A TO E.

A. APPLICATIONS FOR APPROVAL MUST BE SUBMITTED TO THE COMMISSIONER AT LEAST 90 DAYS BEFORE THE DATE OF THE FIRST CONTINUING EDUCATION ACTIVITY. APPLICATIONS MUST BE MADE IN WRITING BY THE PERSON OR OFFICER OF THE ORGANIZATION SPONSORING THE PROGRAM. TO OBTAIN APPROVAL, CONTINUING EDUCATION SPONSORS MUST SUBMIT THE FOLLOWING INFORMATION ON AN APPLICATION PROVIDED BY

THE COMMISSIONER:

This provision is necessary to ensure that continuing education sponsors are capable of offering quality continuing education activities before the sponsors are approved by the Commissioner. The provision is necessary to give sufficient time to complete the fact finding, verification and administrative tasks needed to complete the review and approval of the sponsor. It is also necessary to require that requests for approval be made by a responsible person from the entity sponsoring the activity to ensure that the application is given proper attention. It is necessary and reasonable that the information is given on forms available from the Commissioner to promote receiving uniform information from all applicants. It is reasonable that a method be established to approve continuing education sponsors so as to not limit potential sponsors. If, for example, the rules stated a finite number of approved sponsors, there would be no way of recognizing other potentially capable sponsors of continuing education for registrants.

(1) THE CONTINUING EDUCATION SPONSOR MUST DESCRIBE THE CONTENT OF ALL COURSES TO BE OFFERED. THE COURSE CONTENT MUST CONTRIBUTE DIRECTLY TO THE PROFESSIONAL COMPETENCY OF THE HEARING INSTRUMENT DISPENSER, MUST BE RELATED TO THE USE OF HEARING INSTRUMENTS FOR AIDING OR COMPENSATING THE HEARING IMPAIRED, AND MUST INCLUDE SUBJECT MATTER RELATED TO CURRENT DEVELOPMENTS IN HEARING INSTRUMENT SELLING.

It is necessary to require that applicants for approval as sponsors or continuing education describe the course content of all courses to be offered for continuing education be described so the Commissioner has facts on which to base a decision of approval or disapproval of the applicant sponsor.

It is reasonable that the Commissioner review course content to help ensure that registrants attend continuing education courses that merit

the Commissioner's approval and that courses are relevant to the occupation and worthy of the registrants' time and effort to attend. It is further reasonable to require course content as described because a competent hearing instrument dispenser is required to be skilled in the matters listed.

(2) THE CONTINUING EDUCATION SPONSOR MUST DESCRIBE THE METHOD OF INSTRUCTION FOR EACH COURSE OFFERED. THE CONTINUING EDUCATION SPONSOR MUST DESCRIBE FOR EACH COURSE OFFERED THE TEACHING METHODS TO BE USED, SUCH AS, LECTURE, SEMINAR, AUDIOVISUAL OR SIMULATION.

(3) THE CONTINUING EDUCATION SPONSOR MUST OUTLINE SPECIFIC, WRITTEN OBJECTIVES THAT DESCRIBE EXPECTED OUTCOMES FOR THE PARTICIPANTS.

(4) THE CONTINUING EDUCATION SPONSOR MUST STATE THE NUMBER OF CONTACT HOURS OF CONTINUING EDUCATION WHICH MAY BE OBTAINED BY COMPLETING A SPECIFIED COURSE, WHICH MUST BE A MINIMUM OF ONE HOUR.

It is necessary for the Commissioner to know the teaching method, educational objective and time plans of each continuing education sponsor so that her judgement of approval or disapproval is based on complete information. It is also necessary to require that courses offered be a minimum of one hour as a courtesy to registrants attending. Attending continuing education activities may necessitate traveling, changing work plans, and other potential inconveniences. Requiring the minimum continuing education activity to be at least one hour takes into consideration the potential conflicts of the hearing instrument dispenser. It is reasonable to include the requirements. The request to supply the information is not overly burdensome. The information should be available to the sponsor and the request directly relates to the purpose of obtaining complete information.

(5) THE CONTINUING EDUCATION SPONSOR MUST PROVIDE A RESUME OF EACH INSTRUCTOR'S QUALIFICATIONS WITH THE APPLICATION FOR APPROVAL BY THE COMMISSIONER. INSTRUCTORS SHALL BE QUALIFIED TO TEACH THE SPECIFIED COURSE

CONTENT BASED ON THEIR PRIOR EDUCATION, TRAINING OR EXPERIENCE.

It is necessary to have qualified instructors teach continuing education courses if the courses are to be of value to participants. It is reasonable to require that evidence of qualification, included in a resume, be supplied to the Commissioner because it will help ensure that when the Commissioner approves a sponsor of continuing education, she does so on sound basis. It is necessary and reasonable to include prior education, training and experience as factors indicating qualifications because expertise in hearing instrument dispensing maybe gained in all three ways.

B. SPONSORS OF SALES TRAINING COURSES AND NEW PRODUCT SEMINARS OFFERED FOR CONTINUING EDUCATION PURPOSES ARE SUBJECT TO APPROVAL AS CONTINUING EDUCATION SPONSORS BY THE COMMISSIONER.

It is necessary to notify sponsors of sales training and new product seminars that they may be approved by the Commissioner as continuing education sponsors. It is reasonable to provide that such sponsors may be approved by the Commissioner because the courses they offer have the potential of promoting continuing competency in hearing instrument selling. However, the Commissioner needs assurances that such courses will also indirectly benefit consumers, rather than benefit sellers at the expense of consumers.

C. THE CONTINUING EDUCATION SPONSOR MUST REPORT TO THE COMMISSIONER, ON A TIMELY BASIS, ANY CHANGE IN THE COURSE CONTENT OR INSTRUCTOR.

It is necessary to include this requirement in order to keep the Commissioner fully informed of course content and instructors. The provision is reasonable because this information, as much as the information provided in the original application, relates to the quality of the course. Furthermore, some changes in course content or instructors could be a basis for the

Commissioner to suspend approval of continuing education sponsors.

D. CONTINUING EDUCATION SPONSORS MUST MAINTAIN, FOR A MINIMUM OF THREE YEARS, A RECORD OF ATTENDANCE FOR EACH COURSE OFFERED.

It is necessary that sponsors maintain records of attendance to provide a tool for the Commissioner to verify attendance of registrants when necessary. The requirement is reasonable because it is not overly burdensome. Sponsors may collect the information requested by using sign up sheets at the continuing education activity and keep the information for three years. Some states require that sponsors of continuing education activities, not the person attending, be ultimately responsible for maintaining records of attendance and reporting the same to the credentialing entity. However, such reporting duties could be overly burdensome to the sponsor, especially because many sponsors may be small businesses. It does not seem reasonable to require the sponsor to report attendance for each participant when the individual hearing instrument dispenser has their own attendance information available and will benefit directly from meeting the obligation of reporting. See subpart 5.

E. THE COMMISSIONER MAY WITHDRAW THE APPROVAL OF ANY CONTINUING EDUCATION SPONSOR FOR FAILURE TO COMPLY WITH THIS PART.

This item is necessary to notify approved sponsors of continuing education activities that, once approved, they must continue to provide quality courses to maintain approved status. The provision is reasonable because once a continuing education sponsor is preapproved or approved, a registrant will rely on the sponsor to produce continuing education activities that will satisfy the continuing education requirement. If the Commissioner

did not provide this mechanism for removing approval of continuing education sponsors, she would not be providing adequate administration of the continuing education portion of the registration system.

Subp. 4. EARNING CONTINUING EDUCATION CONTACT HOURS THROUGH CONTACT HOUR EQUIVALENTS. AN APPLICANT WHO TEACHES CONTINUING EDUCATION COURSES MAY OBTAIN CONTACT HOUR EQUIVALENTS ACCORDING TO ITEMS A TO C.

A. THE SPONSOR OF THE COURSE MUST BE APPROVED BY THE COMMISSIONER.

It is necessary to include this provision to recognize that registrants who teach continuing education courses must learn and prepare the information in order to present it and should gain something for their efforts. It is also necessary to require that the contact hour equivalents can be earned for teaching courses only if the sponsor has the Commissioner's approval. The requirement allows the Commissioner to maintain some control over the quality of courses taught for which contact hour equivalents are claimed. The provision is reasonable because preparing to teach is a recognized method of learning, and it can be capable of promoting continuing competency of the teacher in the procedures and techniques of hearing instrument selling. At least one other state offers a method of earning required continuing education through contact hour equivalents. Administrative Rules of Montana Section 8.20.501 (4) and (5) provide a system of allowing continuing education clock hour credits for published books, articles or research contributing to the professional competency of hearing aid dispensers.

B. AN APPLICANT MAY NOT OBTAIN MORE THAN FOUR CONTACT HOURS IN ANY ONE RENEWAL PERIOD BY TEACHING CONTINUING EDUCATION COURSES.

This provision is necessary because one of the basic reasons for

continuing education is to require hearing instrument dispensers to gather information and education from sources other than themselves. Therefore, it is essential to require that a registrant learn as a "student" of continuing education courses as well as through teaching continuing education courses. This provision is reasonable because it allows a balance between contact hours earned through teaching and through the standard means of being a student.

C. AN APPLICANT MAY OBTAIN TWO CONTACT HOURS FOR EACH HOUR SPENT TEACHING A COURSE IF THE COURSE IS SPONSORED BY AN APPROVED CONTINUING EDUCATION SPONSOR. CONTACT HOURS MAY BE CLAIMED ONLY ONCE FOR TEACHING THE SAME COURSE IN ANY TWO-YEAR CONTINUING EDUCATION PERIOD.

This rule is necessary to notify registrants of the guidelines for obtaining continuing education contact hours through contact hour equivalents. It is reasonable because the provision takes into consideration the fact that preparation of presentations is time consuming and often takes at least double the amount of time than the presentation time. The provision further takes into consideration the fact that learning occurs through teaching and the preparation involved in teaching. It is reasonable to include the restriction that contact hours may be claimed only once for teaching the same course in any two-year continuing education period because it is reasonable to assume that the highest learning value occurs in the initial preparation of a course for presentation and that after the initial presentation, less learning occurs while preparing for successive or subsequent teaching of the course.

Subp. 5. EVIDENCE OF ATTENDANCE. EACH APPLICANT IS RESPONSIBLE FOR MAINTAINING RECORDS OF ATTENDING CONTINUING EDUCATION. APPLICANTS MUST PROVIDE WRITTEN EVIDENCE OF ATTENDING THE REQUIRED CONTACT HOURS FOR REGISTRATION RENEWAL. THE EVIDENCE MUST BE SUBMITTED WITH THE RENEWAL APPLICATION ON A FORM PROVIDED BY THE COMMISSIONER. THE FORM MUST INCLUDE THE SPONSORING ORGANIZATION, LOCATION AND DATES OF THE COURSE, COURSE NAME, COURSE INSTRUCTOR, CONTACT HOURS COMPLETED, AND NAME AND SIGNATURE OF THE APPLICANT.

This rule is necessary to put registrants on notice that they are personally responsible for keeping track of continuing education contact hours earned. It is necessary to require registrant reporting of continuing education contact hours as a prerequisite of registration renewal to create added incentive for registrants to complete continuing education. The Commissioner's form is necessary to promote receipt of uniform information. It is necessary that the Commissioner receive the information listed to enable accurate identification of the registrant and courses completed.

This subpart is reasonable because it is not overly burdensome and places responsibilities on the registrant that are commensurate to the benefits received. Placing the responsibility of providing evidence of attendance on the registrant is reasonable because the individual registrant is best able to keep track of this information. Since a variety of approved sponsors may provide one registrant's continuing education, it is most reasonable to have the constant factor in the situation, the registrant, report the attendance rather than each sponsor. At least four other states that credential hearing instrument dispensers and require continuing education as a prerequisite of credential renewal place the responsibility of reporting earned continuing education on the individual. Those states are: Iowa, North Dakota, Montana, and Florida. It is reasonable to require written evidence of attendance as a prerequisite for renewal of registration because participation in continuing education is necessary for a continued meeting of the minimum qualifications set out by these rules. For administrative purposes, it is reasonable to require complete information on the Commissioner's form to promote uniform

regulation of the registrants. The information required is reasonable to ensure that registrants are receiving continuing education contact hours from sponsors the Commissioner has approved or are earning contact hour equivalents in an approved manner. If the Commissioner were required to tabulate sponsor reports to determine each registrant's attendance of continuing education, administrative costs of staff and time would increase. Registrant reporting of earned contact hours will be an administratively efficient method of reporting.

Subp. 6. VERIFICATION OF CONTINUING EDUCATION REPORTS. THE COMMISSIONER MAY REQUEST A REGISTRANT TO VERIFY THE CONTINUING EDUCATION TO WHICH THE REGISTRANT ATTESTED. DOCUMENTATION MAY COME DIRECTLY FROM THE REGISTRANT OR FROM A NATIONAL ACCREDITING OR CERTIFYING ORGANIZATION WHICH MAINTAINS THE RECORDS.

It is necessary to provide for some verification method when self-reporting of attendance is required because verification methods will encourage accurate reporting of continuing education contact hours by registrants. This rule notifies registrants that their reporting of continuing education courses may be checked. This rule is also necessary to notify the registrant that he or she may supply verifying information or that the Commissioner may request verifying information from organizations that maintain such records.

It is reasonable to allow verification of reports of continuing education to reduce cheating and promote honesty. As explained above, the continuing education requirements serve a necessary and reasonable purpose and one that is worthy of safeguarding through verification methods.

4745.0050 FEES.

Subpart 1. FIRST TIME REGISTRANTS AND APPLICANTS FOR REGISTRATION RENEWAL. THE COMMISSIONER SHALL PRORATE THE REGISTRATION FEE FOR FIRST TIME REGISTRANTS AND APPLICANTS FOR REGISTRATION RENEWAL ACCORDING TO THE NUMBER OF MONTHS THAT HAVE ELAPSED BETWEEN THE DATE REGISTRATION IS ISSUED AND THE DATE REGISTRATION MUST BE RENEWED ACCORDING TO PART 4745.0040, SUBPART 4.

This subpart provides that for the initial application and renewal process, those whose renewal periods begin less than one year from the time they registered will pay only a proportionate amount of their first time registration fee. The formula is as follows: X/12 times the annual registration fee where X equals the number of months between the month of application for registration or renewal and the month the applicant for registration or renewal is scheduled for renewal. This requirement is necessary in order to allow for equal treatment of all applicants. This requirement is reasonable because those who have less than one year until their renewal should pay for only that portion of the year for which they were registered.

Subp 2. ANNUAL REGISTRATION FEE. THE FEE FOR INITIAL REGISTRATION AND ANNUAL REGISTRATION RENEWAL IS $93.00.

This subpart is necessary because Minnesota Statutes, section 214.13, requires the registration system to be entirely fee supported. Therefore, the Commissioner of Health, with the approval of the Commissioner of Finance, must assess fees in an amount that closely approximates the anticipated expenditures under the regulation system. The amount is reasonable because the registration fee of $93.00 is derived from the estimated fiscal note and budget for the first year of registration. The estimated budget for fiscal

year 1990 is $18,560.00. The Commissioner estimates that the number of hearing instrument registrants in the first year will be 200. $18,560.00 divided by 200 equals $92.80. This number was rounded to $93.00 for the registration fee. For further explanation see the attached Addendum.

Subp. 3. PENALTY FEE FOR LATE RENEWALS. THE PENALTY FEE FOR LATE SUBMISSION OF A RENEWAL APPLICATION IS $15.00

A penalty fee is necessary for registration renewal made beyond the required deadline in order to create an incentive for submitting applications for registration in a timely manner. A penalty fee is also necessary because a registrant who fails to renew registration will cause the Commissioner to incur administrative costs because of the need to send letters of reminder to register and letters explaining the person's non-registered status. The Commissioner may also be required to incur legal expenses if the registrant continues to use the protected title without having current registration. The fee is reasonable because it is not set at such a level as to present a hardship to the applicant. In addition, the fee is reasonable because the primary purpose of the fee is not to generate revenue but to cover administrative and legal costs incurred due to late registration. Three of the four current registration systems in Minnesota have penalty fees. The penalty fees for Physician Assistants, Physical Therapists, and Environmental Health Specialists/Sanitarians are: $5.00, $10.00 and $10.00 respectively. See, Minnesota Rules, part 5600.2655, subpart 3, Minnesota Rules, part 5600.2500, O., and Minnesota Rules, part 4695.2900, C. The fourth registration system in Minnesota registers Emergency Medical Technicians and Paramedics and is funded by state and federal funds. Therefore, the system

has no registration fee or penalty fee. Examples of penalty fees for late renewal of license in some licensed health occupations include:

Psychologists - $150.00, Minnesota Rules, part 7200.6100
Physicians - $60.00, Minnesota Rules, part 5600.2500, K.
Registered Nurses - $15.00, Minnesota Rules, part 6310.2800, subpart 5
Practical Nurses - $20.00, Minnesota Rules, part 6310.3600, subpart 1, B
Optometrists - "... not to exceed $25.00 ..." Minnesota Rules, part 6500.2000, subpart 4.

Subp. 4. EXAMINATION FEE. THE FEE FOR TAKING THE WRITTEN AND PRACTICAL EXAMINATION REQUIRED BY PART 4745.0025 IS $50.00.

One of the administrative expenses of the registration system is the cost of providing and administering the examination. As stated above, Minnesota Statutes, sections 214.06, 214.13 and 16A.128 require the registration system to be entirely fee supported, therefore it is necessary to require the cost of providing and administering the examination be paid for by each applicant. The examination fee is reasonable because it covers only the costs of buying the examination from the testing service, preparing the portion of the examination that is directly related to Minnesota and administering the examination.

Several options are available for entry examinations for the hearing instrument dispensers. The Commissioner could hire a consultant to prepare an examination, request that the advisory council prepare an examination, or pay for examination services from some professional or testing organization. The Commissioner will pay for examination services for the written portion of the examination. However, the portion of the written examination dealing with federal and Minnesota laws, rules, and regulations and the practical portion of the examination will be prepared by the advisory council and Health

Department staff. The cost for buying the examination services from the National Hearing Aid Society (NHAS) for the written portion of the exam is $25.00. That price covers NHAS sending the examination to Minnesota and NHAS scoring and returning the scores and examinations to Minnesota. Approximately 28 other states use the examination services of NHAS. The remaining $25.00 will be used to cover the expenses of developing the remaining portion of the written examination and developing the practical examination, paying for accommodations to administer the test, if necessary, and paying for personnel necessary to proctor the written examination and administer the practical portion of the examination.

Subp. 5. SURCHARGE. IN ADDITION TO THE OTHER APPLICABLE FEES, EACH APPLICANT MUST PAY A SURCHARGE FEE OF $35.00. THE SURCHARGE FEE APPLIES TO ALL REGISTRANTS DURING THE FIRST FIVE YEARS FOLLOWING THE EFFECTIVE DATE OF PARTS 4745.0010 TO 4745.0060.

This subpart is necessary because Minnesota Statutes, section 214.06, subdivision 1 states in part:

> For members of an occupation registered after July 1, 1984 by the commissioner of health under the provisions of section 214.13, the fee established must include an amount necessary to recover, over a five-year period, the commissioner's direct expenditures for adoption of the rules providing for registration of members of the occupation.

As stated above, the surcharge fee must be recovered over a five year period. This amount is reasonable because the surcharge fee of $35.00 was derived from the following formula: the estimated expenditures for fiscal year 1989 are $35,174.00. This figure must be divided by the number of years (five) the surcharge fee will be in effect. The resulting figure is then divided by the number of estimated registrants, or 200. The end result is $35.17. This

number was rounded to $35.00.

Subp. 6. NONREFUNDABLE FEES. ALL FEES ARE NONREFUNDABLE.

It is necessary to inform applicants for registration that all fees described in the registration system are nonrefundable because it puts them on notice. The nonrefundable fee requirement is reasonable because the administrative costs begin when the Commissioner sends the applications for examination or registration to applicants, and continue when the Commissioner receives the applications for review. If an applicant were denied registration or an opportunity to sit for the exam and allowed a refund of the money, then the Commissioner would not be reimbursed for the costs of mailing the applications and reviewing them. The application fee also takes into account an estimate of costs that will be incurred if an applicant, who has been denied registration, seeks to have the advisory council and the commissioner review the decision to deny. Failure to cover all of the costs described above would not be in compliance with Minnesota Statutes, sections 214.06, 214.13 and 16A.128.

4745.0055 INVESTIGATION PROCESS AND GROUNDS FOR DISCIPLINARY ACTION.

Subpart 1. INVESTIGATIONS OF COMPLAINTS. THE COMMISSIONER OR ADVISORY COUNCIL MAY INITIATE AN INVESTIGATION UPON RECEIVING A COMPLAINT OR OTHER ORAL OR WRITTEN COMMUNICATION THAT ALLEGES OR IMPLIES THAT AN INDIVIDUAL HAS VIOLATED PARTS 4745.0010 TO 4745.0060. THE INVESTIGATION MAY PROCEED ON AN ORAL COMPLAINT BUT DISCIPLINARY ACTION MAY ONLY PROCEED ON A SIGNED COMPLAINT. THE ADVISORY COUNCIL MAY RECOMMEND WHETHER THE COMMISSIONER SHOULD TAKE DISCIPLINARY ACTION AGAINST AN INDIVIDUAL. ACCORDING TO MINNESOTA STATUTES, SECTION 214.13, SUBDIVISION 6, IN THE RECEIPT, INVESTIGATION, AND HEARING OF A COMPLAINT THAT ALLEGES OR IMPLIES AN INDIVIDUAL HAS VIOLATED PARTS 4745.0010 TO 4745.0060, THE COMMISSIONER SHALL FOLLOW THE PROCEDURES IN MINNESOTA STATUTES, SECTION 214.10.

This subpart sets out the procedure for investigating individuals when complaints have been received. It is necessary to notify individuals of these procedures in order to put them on notice if they become the subject of an investigation. It is reasonable that the Commissioner have authority to initiate investigations regarding violations of parts 4745.0010 to 4745.0060 by any individual because if the authority did not exist, the registration would not provide protection to the public. Also, it is reasonable that the Commissioner have authority over individuals due to her statutory authority as described under part 4745.0010, subpart 15.

It is necessary that the advisory council have a role in investigations because of the expertise of the advisory council. It is reasonable that this expertise be made available to the Commissioner by means of an advisory council. Other options, which are likely more costly ways for the Commissioner to obtain expert advice, would be to hire a consultant or full time staff person. The number of investigations may not justify this approach; therefore, a volunteer advisory council is a reasonable mechanism.

The procedure set out in this subpart is also reasonable because Minnesota Statutes, section 214.13, subdivision 6 provides:

> The provisions of section 214.10, shall apply to any complaint or other communication, whether oral or written, received by the commissioner of health which alleges or implies a violation of a statute or rule which the commissioner is empowered to enforce relating to a specific occupational group for which a registration requirement has been created pursuant to this section.

Therefore, the procedure set out in Minnesota Statutes, section 214.10 are reasonable and appropriate for the commissioner to follow.

This provision is also reasonable because one of the primary purposes of the registration system is protection of the public through the establishment of minimum standards of competence. Only people meeting the standards can use the protected titles, and these rules must establish reasonable enforcement mechanisms to protect the public from incompetent and unqualified hearing instrument dispensers. One of the purposes of the advisory council is to advise the Commissioner of specialized knowledge about the occupation of hearing instrument selling and fitting. It is reasonable therefore, to include the advisory council in the process of the investigation and provide the option to the Commissioner of utilizing its expertise.

It is very likely that an individual's occupational reputation will be affected by discipline, therefore the prerequisite of a signed complaint prior to disciplinary action is necessary and reasonable. Requiring that a complaint be signed before a disciplinary action will be bought against an individual is necessary to help ensure that the complaining party realizes that causing a disciplinary action to be taken is a serious act. It is less likely that a complaining party will sign a frivolous or false complaint because most people are reluctant to sign a document unless they are certain that the document is accurate to the best of their belief. The prerequisite of a signed complaint prior to bringing disciplinary action is reasonable because, if a complaining party truthfully feels that an individual's behavior warrants discipline, the complaining party should be willing to state so in writing by signing a complaint.

Subp. 2. RIGHTS OF INDIVIDUALS. INDIVIDUALS SUBJECT TO DISCIPLINE UNDER PARTS 4745.0010 TO 4745.0060 MAY, WITHIN 30 DAYS OF THE COMMISSIONER'S

DECISION, REQUEST IN WRITING TO APPEAR BEFORE THE ADVISORY COUNCIL AND FOR THE ADVISORY COUNCIL TO REVIEW THE COMMISSIONER'S DECISION. THE ADVISORY COUNCIL SHALL RECOMMEND TO THE COMMISSIONER WHETHER A HEARING SHOULD BE CONDUCTED ACCORDING TO MINNESOTA STATUTES, CHAPTER 14. EACH INDIVIDUAL IS ALLOWED NO MORE THAN ONE REQUEST FOR REVIEW BY THE ADVISORY COUNCIL OF THE COMMISSIONER'S DECISION REGARDING ANY ONE COMPLAINT.

This subpart notifies individuals of their rights under the registration system. This subpart is necessary because individuals must be aware that they have rights as well as obligations under the registration system. It is also necessary to specifically notify individuals of their right to request an appearance before the advisory council under the circumstances noted in the subpart.

It is reasonable that individuals have the right to request an appearance before the advisory council if they are subject to discipline. Such an event may, for example, deprive registrants of the right to use titles affecting their livelihoods. Therefore, discipline may be consequential and worthy of an appearance before a body composed of peers and/or people with expertise about the issues at hand.

It is necessary to set time limits to be used regarding requests for an appearance before the advisory council. If such timelines were not set, requests could become stale. Stating the timelines provides individuals clear guidelines to follow when making a request for a review. The 30-day timeline is reasonable because it should be sufficient for a person to prepare and make the request, yet it is not so long a time as to prevent a steady flow of the business of the advisory council from taking place.

It is necessary to state in the rule that the advisory council must make a recommendation to the commissioner whether a hearing should be held pursuant

to Minnesota Statutes, chapter 14 because stating so puts an individual on notice of the procedure that will apply upon a request for review by the advisory council. It is reasonable to charge the advisory council with this duty because one of the duties of the advisory council stated in part 4745.0060 subpart 3, item E, is to "review reports of investigations relating to individuals and make recommendations to the commissioner as to whether registration should be denied or disciplinary action taken against the individual."

It is also necessary to limit the right to request a review by the advisory council to one request regarding any one complaint because, if such a limitation was not set, one person could use the time of the advisory council unnecessarily to the disadvantage of others. The limitation is reasonable because it allows an avenue of relief to a person subject to discipline yet does not allow one person to monopolize the time of the advisory council unnecessarily.

Subp. 3. GROUNDS FOR DISCIPLINARY ACTION BY THE COMMISSIONER. THE COMMISSIONER MAY TAKE ANY OF THE DISCIPLINARY ACTIONS LISTED IN SUBPART 4 UPON PROOF THAT THE INDIVIDUAL HAS:

It is necessary that the Commissioner have the discretion to take the listed disciplinary actions because the Commissioner is charged with protecting the health, safety and welfare of the public. It is necessary and reasonable to provide discipline options varying in degree of severity because violations may vary in degree of severity. It is also necessary that the Commissioner have discretion, as indicated by the word "may", to decide which, if any, disciplinary action is appropriate in each case. The Commissioner,

with the advice of the advisory council, is in the best position to determine whether discipline is needed and, if so, what discipline will best serve the public in each case. To require that the Commissioner always impose discipline, for example by replacing the word "may" with "shall", or to require that the Commissioner impose a specific discipline for a specific violation would likely weaken the consumer protection available through the registration system and would be contrary to the main purpose of the system, consumer protection. It is more likely than not that each violation of parts 4745.0010 to 4745.0060 will have distinctive characteristics that need to be considered on an individual basis. Therefore this subpart is necessary.

The Commissioner's authority to take disciplinary action against individuals arises out of several sections of Minnesota Statutes, chapter 214 as described in this Statement under part 4745.0010, subpart 15. Minnesota Statutes, section 214.13, subdivision 7 states:

> The duties of the executive secretary or board members specified in section 214.10, subdivision 1 and 2, shall be performed with respect to occupations regulated pursuant to this section by the advisory council established under subdivision 4, or if no council has been created, by the health-related licensing board which has been delegated the administration of regulation activities, or if no such delegation has been made, by a staff member appointed by the commissioner. For the purposes of subdivision 6 and this subdivision, the commissioner may exercise the powers granted to boards by section 214.10, subdivision 3, when carrying out the duties of this subdivision.

In this instance, no appropriate health-related licensing board existed for delegation of administration of regulation duties so the Commissioner will assume the responsibility of administering the registration system, including the disciplinary function, with the advice of an advisory council and a staff

person. This subpart is reasonable because it sets out provisions according to the statutory authority provided in Minnesota Statutes, chapter 214.

A. SUBMITTED FALSE OR MISLEADING INFORMATION TO THE COMMISSIONER TO OBTAIN OR RENEW REGISTRATION OR FOR ANY OTHER PURPOSE;

This rule allows the Commissioner to discipline individuals who fail to provide information or purposely provide false or misleading information in order to become registered, to renew registration or for any other purpose. It is necessary because meaningful regulatory procedures cannot be enforced without truthful information. Therefore, this provision is reasonable because valid registration cannot be based on false or misleading information.

B. FAILED, WITHIN 30 DAYS, TO PROVIDE INFORMATION IN RESPONSE TO A WRITTEN REQUEST BY THE COMMISSIONER OR ADVISORY COUNCIL;

This proposed rule allows for a 30-day period in which to submit information requested by the Commissioner or advisory council. It is necessary to inform individuals that they will have a certain amount of time to comply with requests for information once they are made. This 30-day period is reasonable because it allows an individual an adequate amount of time to gather information and submit it to the Commissioner or advisory council.

C. PERFORMED SERVICES OF A HEARING INSTRUMENT DISPENSER IN AN INCOMPETENT OR NEGLIGENT MANNER;

It is necessary for the Commissioner to discipline registered hearing instrument dispensers who perform services in an incompetent or negligent manner in order to protect the public. One of the reasons the registration system is proposed is to address incompetent or negligent service delivery by

hearing instrument dispensers. This rule is reasonable because the registration system requires minimum qualifications to be met and maintained, through continuing education, as a prerequisite for use of the protected titles. Incompetently or negligently performing services is equivalent to failing to meet the minimum qualifications, therefore it is reasonable that registrants acting in the ways listed be disciplined.

D. VIOLATED PARTS 4745.0010 TO 4745.0060;

It is necessary to provide grounds for the Commissioner to discipline individuals who have violated these rules because the Commissioner is bound to enforce these rules. The basic intent of the registration system is to protect the public. A violation of any of these rules by a an individual could represent a risk of harm to the citizens of Minnesota, therefore it is reasonable to include this rule.

E. BEEN UNABLE TO PERFORM SERVICES WITH REASONABLE JUDGMENT, SKILL AND SAFETY DUE TO THE USE OF ALCOHOL OR DRUGS, OR OTHER CAUSES;

To properly protect the public from harm, or potential harm that is not remote, it is necessary that the Commissioner have the ability to enforce proper discipline on grounds related to basic physical and mental capability. Physical or mental impairment of a seller may interfere in the seller's ability to provide competent service to consumers. It is reasonable that the Commissioner have the authority to deny a seller's use of a protected title because use of the title implies state recognition of the seller's competence and qualification.

F. BEEN CONVICTED WITHIN THE LAST FIVE YEARS OF VIOLATING ANY LAWS OF THE UNITED STATES, OR ANY STATE OR TERRITORY OF THE UNITED STATES, AND THE VIOLATION IS A FELONY OR MISDEMEANOR, AN ESSENTIAL ELEMENT OF WHICH IS

DISHONESTY, OR WHICH IS RELATED TO HEARING INSTRUMENT SELLING;

This rule makes it clear that the Commissioner may discipline hearing instrument dispensers who have violated any federal, state or territorial law which is a felony or misdemeanor if an essential element of the law is dishonesty or violation of the law is directly related to hearing instrument selling. This rule is necessary to enable the Commissioner to fulfill her statutory obligation to protect the health, safety and well being of the public. Minnesota Statutes, section 214.001. As part of that function, it is essential that the Commissioner discipline hearing instrument dispensers when they violate the laws described above. It is reasonable to expect that a hearing instrument seller who seeks the use of the titles under the registration system, or is already registered, has not or will not violate the laws described. The use of the titles is equivalent to state recognition of minimum competency to fit and sell hearing instruments. The title may represent to the public a "stamp of approval" by the state. It would not be reasonable that a person be given such recognition if the laws mentioned had been violated.

G. AIDED OR ABETTED ANOTHER PERSON IN VIOLATING ANY OF THE PROVISIONS OF PARTS 4745.0010 TO 4745.0060;

This provision allows the Commissioner to discipline a hearing instrument dispenser if the dispenser aided or betted another person in violating provisions of these rules. It is necessary because assisting another person in violating these rules may be as harmful to the public as personally violating the rules, and the Commissioner must have sanctions available to deter such activity. It is just as reasonable to expect a hearing instrument

dispenser to personally refrain from violating laws directly related to honesty and hearing instrument selling as it is to expect a hearing instrument dispenser to refrain from assisting another to violate similar laws.

H. BEEN OR IS BEING DISCIPLINED BY ANOTHER JURISDICTION, IF ANY OF THE GROUNDS FOR THE DISCIPLINE IS THE SAME OR SUBSTANTIALLY EQUIVALENT TO THOSE IN PARTS 4745.0010 TO 4745.0060;

This rule takes into account that a Minnesota hearing instrument dispenser may be credentialed in another jurisdiction and could also be, or have been, subject to discipline by that jurisdiction. It is necessary in such circumstances to provide for discipline under these rules to promote the main function of the rules which is to protect the public. The Minnesota public would not be adequately protected if a hearing instrument dispenser, while selling in Minnesota, was not responsible for his or her conduct outside of Minnesota which directly relates to the qualifications of the dispenser when he or she sells in Minnesota.

It is reasonable to expect hearing instrument dispensers to abide by all rules or laws of other jurisdictions, especially since this rule limits the laws and rules which must be followed to those which are the same or substantially equivalent to those set forth herein.

I. NOT COOPERATED WITH THE COMMISSIONER OR ADVISORY COUNCIL IN AN INVESTIGATION CONDUCTED ACCORDING TO SUBPART 1; OR

This rule is necessary to inform applicants and registrants that they must cooperate with the Commissioner or advisory council during an investigation. The authority of the Commissioner to register occupations given in Minnesota Statutes, section 214.13, subdivisions 1 and 3 allows the

Commissioner to promulgate rules including procedures and standards relating to disciplinary matters. This language, among other things, can be interpreted to mean that the rules should protect the public from hearing instrument dispensers who are not willing to cooperate with investigations. It is reasonable to include this rule because it is consistent with Minnesota Statutes, section 214.13, subdivisions 1 and 3. Also, it is reasonable to expect applicants and registrants to cooperate with investigations because an applicant seeking the use of a protected title and a registrant using the protected title should be willing to take the steps necessary to show why they should be registered or remain registered. If an applicant or a registrant believes that he or she should be registered or remain registered, cooperation with the investigation described in this item should not be burdensome to the applicant or registrant. The rule does not suggest that the person subject to these regulations sacrifice rights in order to evidence cooperation.

J. ENGAGED IN ANY OF THE ACTS PROHIBITED BY MINNESOTA STATUTES, SECTION 153A.15, SUBDIVISION 1.

This rule takes into account that a Minnesota hearing instrument dispenser must have a permit to engage in hearing instrument selling. See, Minnesota Statutes, chapter 153A and Minnesota Rules, parts 4692.0010 to 4692.0045. The permit system contains a disciplinary section which includes prohibited acts set out in Minnesota Statutes, section 153A.15, subdivision 1. An individual subject to the Commissioner's jurisdiction under the registration system could also be subject to discipline under the permit system. It may be necessary in such circumstances to provide for discipline under these rules to promote the main function of the rules which is to

protect the public.

It is reasonable to expect individuals under the jurisdiction of the registration system to refrain from the acts prohibited by Minnesota Statutes, section 153A.15, subdivision 1, because the main purpose of setting out the prohibited acts in Minnesota Statutes, section 153A.15, subdivision 1, is to protect the public. This goal coincides with the main purpose of the registration system.

The authority for the Commissioner to take disciplinary action against individuals who violate parts 4745.0010 to 4745.0060 arises out of several sections of Minnesota Statutes, chapter 214. The statutory authority for the Commissioner's jurisdiction is set out under part 4745.0010, subpart 15.

Subp. 4. DISCIPLINARY ACTIONS. IF THE COMMISSIONER FINDS THAT AN INDIVIDUAL SHOULD BE DISCIPLINED ACCORDING TO SUBPART 3, THE COMMISSIONER MAY TAKE ANY ONE OR MORE OF THE FOLLOWING ACTIONS:

This section defines the disciplinary options available to the Commissioner if it is determined that disciplinary action is warranted. It is necessary that individuals know that action may be brought when conduct does not meet the parameters established by these rules in order to put them on notice. It is reasonable because a discipline mechanism in the registration system will strengthen it by creating penalties for those who do not meet the requirements of registration or violate parts 4745.0010 to 4745.0060 in some way. For example, an applicant who does not meet the entry requirements set by the rules will not be granted registration, or a registrant, who originally met the entry requirements of the rules, but acts in one of the ways described in part 4745.0055, subpart 3, may have his or her registration affected by one

of the ways described in this subpart.

A. REFUSE TO GRANT OR RENEW REGISTRATION;

B. SUSPEND REGISTRATION FOR A PERIOD NOT EXCEEDING ONE YEAR;

C. REVOKE REGISTRATION FOR A PERIOD NOT EXCEEDING THREE YEARS;

D. ADMINISTER A REPRIMAND;

E. IMPOSE CONDITIONS, LIMITS, OR RESTRICTIONS ON THE HEARING INSTRUMENT DISPENSER'S REGISTRATION; OR

F. TAKE ANY REASONABLE ACTION AGAINST AN INDIVIDUAL UPON PROOF THAT THE INDIVIDUAL HAS VIOLATED PARTS 4745.0010 TO 4745.0060.

It is necessary that the Commissioner have available a variety of disciplinary methods to sanction conduct that may occur because violations may vary in degree of severity. It is also necessary and reasonable that the Commissioner be able to determine which disciplinary method, if any, is most appropriate in each circumstance. For further discussion regarding the necessity and reasonableness of using the word "may", as opposed to the word "shall", see this Statement under part 4745.0055, subpart 3. It is also necessary and reasonable to put individuals on notice that the Commissioner has several options for discipline of registrants and individuals.

The options set forth above are reasonable because they are standard disciplinary options available to licensing and registration systems. The physician assistant registration rules allow the Board of Medical Examiners several disciplinary options as set out in Minnesota Rules, part 5600.2660, subpart 2:

> The board shall refuse to grant or renew a registration, or shall suspend or revoke a registration, or use any reasonable lesser remedy against a physician assistant ... .

The registration rules for environmental health specialists/sanitarians allows the Commissioner of Health several disciplinary options as set out in Minnesota Rules, part 4695.3000, subpart 2: "The commissioner may refuse to grant or renew registration, suspend or revoke registration, or use any reasonable lesser remedy against a registrant for the following reasons ... ." It is reasonable that disciplinary options be listed because the listing will give the Commissioner guidelines to follow when disciplinary action decisions need to be made. It is reasonable that the disciplinary options be made known to individuals because all features of the registration system should be known to those who seek to participate in the system, to those who are registered and to those who use one of the protected titles without being registered.

Subp. 5. CONSEQUENCES OF DISCIPLINARY ACTION. UPON THE SUSPENSION OR REVOCATION OF REGISTRATION, THE HEARING INSTRUMENT SELLER SHALL CEASE TO USE TITLES PROTECTED BY PARTS 4745.0010 TO 4745.0060 AND SHALL CEASE TO REPRESENT TO THE PUBLIC THAT THE HEARING INSTRUMENT SELLER IS REGISTERED BY THE COMMISSIONER.

If it should become necessary to suspend or revoke registration, it is necessary to require the disciplined person to refrain from using the protected title or titles he or she has been using and to refrain from representing himself or herself to the public as a registered person. These procedures are necessary to ensure that there is no misunderstanding by the public, intentional or otherwise, about the disciplined person's registration status. It is a reasonable rule because it can be easily complied with and the disciplined person has no further use for the title, titles or documents of registration once the status of registration is removed.

Subp. 6. REINSTATEMENT REQUIREMENTS AFTER DISCIPLINARY ACTION. A HEARING INSTRUMENT SELLER WHO HAS HAD REGISTRATION SUSPENDED OR REVOKED MAY APPLY FOR REINSTATEMENT OR REGISTRATION RENEWAL FOLLOWING THE PERIOD OF SUSPENSION OR REVOCATION SPECIFIED BY THE COMMISSIONER. ALL REQUIREMENTS OF PART 4745.0040 FOR RENEWING REGISTRATION MUST BE MET BEFORE REGISTRATION MAY BE REINSTATED OR RENEWED.

A person who has had his or her registration revoked must wait the period of time specified by the Commissioner before applying for registration. This is a necessary requirement for several reasons. First, the provision allows the Commissioner to vary the amount of time in relation to the severity of discipline called for by specific circumstances. Second, the disciplinary actions are necessary to support the competency standards in hearing instrument dispensing. Persons who have been found in violation of these standards must show they are able to meet these standards before registration is reinstated. Some period of time may be required to give the disciplined seller an opportunity to do coursework or training or otherwise demonstrate competency and good conduct during the period of suspension. Because removal from the registration roster does not preclude practice, it is possible for a seller to demonstrate the competence necessary to regain authorized use of the protected titles. It is also necessary that the requirements of part 4745.0040 for renewing registration be met before reinstatement or renewal to have assurances that all registered hearing instrument dispensers are held to the same standard.

This subpart is reasonable because the Commissioner is responsible for upholding the standards associated with the titles protected by the registration system. This rule allows the Commissioner to maintain control over the discipline process and to have more control over the interpretation

of the standards.

4745.0060 HEARING INSTRUMENT DISPENSER ADVISORY COUNCIL

Subpart 1. MEMBERSHIP. THE COMMISSIONER SHALL APPOINT SEVEN PERSONS TO A HEARING INSTRUMENT DISPENSER ADVISORY COUNCIL.

A. THE SEVEN PERSONS MUST INCLUDE:

(1) TWO PUBLIC MEMBERS, AS DEFINED IN MINNESOTA STATUTES, SECTION 214.02. ONE OF THE PUBLIC MEMBERS SHALL BE A HEARING INSTRUMENT USER AND ONE OF THE PUBLIC MEMBERS SHALL BE EITHER A HEARING INSTRUMENT USER OR AN ADVOCATE OF SUCH A PERSON; AND

Minnesota Statutes, section 214.13, subd. 4, states:

> The commissioner of health may establish an advisory council to advise the commissioner or the appropriate health-related board on matters relating to the registration and regulation of an occupation. A council shall have seven members appointed by the commissioner of which five are members of the registered occupation or related registered or licensed occupations, and two are public members. A council shall expire, and the terms, compensation and removal of members shall be as provided in section 15.059.

Minnesota Statutes, section 214.13, subdivision 4, gives the Commissioner the option of appointing an advisory council. An advisory council will be helpful to advise the Commissioner on technical matters related to hearing instrument selling. It is necessary that the Commissioner appoint seven persons to the advisory council to fulfill the requirements of Minnesota Statutes, section 214.13, subdivision 4. Reasonableness is based on the expectation that the advisory council may provide valuable assistance regarding registration and regulation issues that are likely to arise.

The specific provision for two public members is necessary to meet Minnesota Statutes, section 214.13, subdivision 4, which requires two public

members. It is reasonable to require that one of the public members be a hearing instrument user because such a person would be a member of the protected class and will promote better understanding of issues to be considered by the advisory council. It is also reasonable to require that one of the public members be a hearing instrument user or an advocate of such a user because such a person is likely to be familiar with the types of issues that may arise for consideration by the advisory council.

(2) FOUR HEARING INSTRUMENT DISPENSERS REGISTERED UNDER PARTS 4745.0010 TO 4745.0060, EACH OF WHOM IS CURRENTLY AND HAS BEEN FOR THE FIVE YEARS IMMEDIATELY PRECEDING THEIR APPOINTMENT ENGAGED IN HEARING INSTRUMENT SELLING IN MINNESOTA; AT LEAST THREE MUST BE REGISTERED HEARING INSTRUMENT DISPENSERS WHO ARE NOT AUDIOLOGISTS AND ONE MUST BE A REGISTERED HEARING INSTRUMENT DISPENSER WHO IS AN AUDIOLOGIST; AND

(3) ONE OF THE FOLLOWING:

(a) A LICENSED PHYSICIAN SPECIALIZING IN TREATMENT OF DISEASES OF THE EAR, WHO IS CERTIFIED BY THE AMERICAN BOARD OF OTOLARYNGOLOGY BUT IS NOT ALSO A SELLER OF HEARING INSTRUMENTS AND HAS NO FINANCIAL INTEREST IN THE BUSINESS OF HEARING INSTRUMENT SELLING; OR

(b) A DISPENSING AUDIOLOGIST WHO MEETS THE REGISTRATION REQUIREMENTS SET OUT IN MINNESOTA RULES, OR IF NO SUCH RULES ARE IN EFFECT, AN AUDIOLOGIST WHO HOLDS A CURRENT CERTIFICATE OF CLINICAL COMPETENCE IN AUDIOLOGY FROM THE AMERICAN SPEECH-LANGUAGE-HEARING ASSOCIATION.

Minnesota Statutes, section 214.13, subdivision 4, requires advisory council membership to include " ... five ... members of the registered occupation or related registered or licensed occupations ... ." Therefore, the provisions of the rule setting out membership for registered hearing instrument dispensers (one who is an audiologist), a physician or a dispensing audiologist are necessary, in part to, fulfill the statutory requirements of the statute cited above.

The rule requires that hearing instrument dispensers, who are members of the advisory council, have engaged in hearing instrument selling in Minnesota for at least five years immediately preceding their appointment and that at least three of the dispensers not be audiologists. It is necessary to have hearing instrument dispensers who are experienced sellers in Minnesota because they will provide practical knowledge regarding the types of issues that are likely to arise. It is reasonable to have the perspective of the public, hearing instrument dispensers, and an audiologist or physician represented on the advisory council to provide a more complete picture of issues to be considered. However, it is also reasonable that the largest block on the advisory council be allotted to hearing instrument dispensers because they are the primary group being regulated. It is vital that the occupation be adequately represented because the hearing instrument dispensers, as individuals, will be directly affected by the registration system.

It is necessary to include the perspective of a physician and an audiologist on the advisory council to provide additional expertise that may be needed and to provide an additional viewpoint that otherwise might be missed if the advisory council were composed only of two public members and five hearing instrument dispensers. It is reasonable to include a physician who specializes in treatment of diseases of the ear or a dispensing audiologist because both persons are experienced in matters that are common to hearing instrument dispensers and that experience will serve to enrich the advice the advisory council gives to the Commissioner. It is also reasonable that the position for a physician on the advisory council be filled by someone

who does not sell hearing instruments and has no financial interest in the business of hearing instrument selling because the physician's perspective is sought for his or her medical knowledge, not for the special perspective he or she may have on the business aspect of hearing instrument selling.

B. NO TWO MEMBERS OF THE ADVISORY COUNCIL SHALL BE EMPLOYEES OF, OR HAVE BINDING CONTRACTS REQUIRING SALES EXCLUSIVELY FOR, THE SAME HEARING INSTRUMENT MANUFACTURER OR THE SAME EMPLOYER.

This rule is necessary to guard against bias in favor of any one manufacturer or employer by the advisory council. Information from sellers indicates that it is not uncommon in the business of hearing instrument selling for a seller, or a group of sellers within a business, to exclusively sell by agreement the product of one manufacturer. If more than one member of the advisory council had such exclusive sales agreements with one manufacturer or the same employer, there would be potential for bias in recommendations made to the Commissioner. Also, it is not unusual for a manufacturer to produce one type of hearing instrument. Therefore, to guard against bias in favor of one type of product, it is necessary to include this rule.

This rule is reasonable because there are a variety of employers of hearing instrument sellers and manufacturers of hearing instruments and not all hearing instrument dispensers are bound by exclusive sales agreements. Therefore, the restriction created by this rule will not impinge excessively on eligibility requirements for membership on the advisory council.

Subp. 2. ORGANIZATION. THE ADVISORY COUNCIL SHALL BE ORGANIZED AND ADMINISTERED UNDER MINNESOTA STATUTES, SECTION 15.059.

Minnesota Statutes, section 15.059 as referred to in Minnesota Statutes,

section 214.13, subdivision 4, sets forth the terms, the compensation and the removal of members of the council. It is necessary to follow the statutory authority given for the organization and administration of advisory councils. It is reasonable to set this rule out to provide guidance and instruction for those who will be organizing the advisory council.

Minnesota Statutes, section 15.059, subdivision 5 states:

> Expiration date. Unless a different date is specified by law, the existence of each advisory council and committee governed by this section shall terminate on June 30, 1989.

The statute was amended to read:

> EXPIRATION DATE. Unless a different date is specified by law, the existence of each advisory council and committee governed by this section shall terminate on June 30, 1993. Act of May 26, 1989, ch. 343, sec. 4, 1989 Minn. Sess. Law Serv. 2088 (West)."

Subp. 3. DUTIES. THE ADVISORY COUNCIL SHALL:

A. ADVISE THE COMMISSIONER REGARDING HEARING INSTRUMENT DISPENSER REGISTRATION STANDARDS;

B. ADVISE THE COMMISSIONER ON ENFORCEMENT OF REGULATIONS IN PARTS 4745.0010 TO 4745.0060;

It is necessary that the Commissioner have the option of calling upon the advisory council to advise her regarding registration standards and enforcement of these rules. Although the Commissioner may be familiar with the requirements of the rules regarding registration standards and enforcement of regulation, it is wise to have the option of consulting the advisory council on technical matters for additional understanding of issues that may arise. It is reasonable that the advisory council advise the Commissioner on registration standards and enforcement because the advisory council will be

composed of members of protected and regulated classes: hearing instrument users and people who have expertise and experience in hearing instrument selling. The advisory council will be in a position to be familiar with the consumer concerns, registration standards and enforcement issues.

The Commissioner's authority for creating the advisory council states in part, "The commissioner of health may establish an advisory council to advise the commissioner ... on matters relating to the registration and regulation of an occupation." Minnesota Statutes, section 214.13, subdivision 4. It is reasonable that advice regarding the regulation of an occupation relates to advice regarding the enforcement of parts 4745.0010 to 4745.0060 because enforcement of the rules comprising the registration system for hearing instrument dispensers directly relates to "regulation" of the occupation.

C. PROVIDE FOR DISTRIBUTION OF INFORMATION REGARDING HEARING INSTRUMENT DISPENSER REGISTRATION STANDARDS;

It is necessary to provide that information regarding hearing instrument dispenser registration standards be distributed to the public, applicants and registrants to promote a successful registration system. In order for the registration system to serve the purpose of protecting the public, the public will need to be informed of the significance of the protected titles. Applicants and registrants must also know the prerequisites for use of protected titles. It is reasonable to require that the advisory council provide this information because they will be working within the rules and will have the expertise and experience needed to handle the problems involving distribution of information. Also, it is reasonable for the advisory council

to suggest how to best distribute this information because their experience will provide knowledge of where the problem areas are and where limited information regarding hearing instrument dispensers and these rules exist.

D. REVIEW APPLICATIONS AND MAKE RECOMMENDATIONS TO THE COMMISSIONER ON GRANTING OR DENYING REGISTRATION OR REGISTRATION RENEWAL;

It is necessary that the responsibility of reviewing applications and recommending applicants for registration or renewal of registration be placed with the advisory council because the members will have the specialized knowledge and experience required to make an accurate assessment of applications and to assure that the minimum qualifications are met. The rule is reasonable because the composition of the advisory council will provide a fair review mechanism of applications.

E. REVIEW REPORTS OF INVESTIGATIONS RELATING TO INDIVIDUALS AND MAKE RECOMMENDATIONS TO THE COMMISSIONER AS TO WHETHER REGISTRATION SHOULD BE DENIED OR DISCIPLINARY ACTION TAKEN AGAINST THE INDIVIDUAL;

This rule is necessary to clearly state that the function of the advisory council is advisory in the instance of reviewing reports of investigations and recommending action regarding applications or discipline. It is reasonable to keep the role of the advisory council in the matters of investigations, applications and discipline as purely advisory because the Commissioner has the ultimate responsibility to enforce the registration system and should therefore have the final say regarding applications and discipline.

F. ADVISE THE COMMISSIONER REGARDING APPROVAL OF CONTINUING EDUCATION SPONSORS USING THE CRITERIA IN PART 4745.0045, SUBPART 3; AND

It is necessary and reasonable that the Commissioner have the option of using the advisory council's occupational expertise to make decisions about

approving people or organizations as sponsors of continuing education because the availability of the advisory council's expertise regarding continuing education and sponsors of it will help ensure that continuing education sponsors offer worthwhile activities that promote continuing competency in the procedures and techniques of hearing instrument selling.

G. PERFORM OTHER DUTIES AUTHORIZED FOR ADVISORY COUNCILS BY MINNESOTA STATUTES, CHAPTER 214, OR AS DIRECTED BY THE COMMISSIONER.

It is necessary to include this rule to cover additional situations, not known at this time, that may arise wherein the Commissioner is given the option of directing the advisory council to act. It is reasonable to include this rule because the business of hearing instrument selling is a developing field where new problems may arise. It is also reasonable that the Commissioner be given the option of calling on the advisory council to perform additional tasks, because their expertise and experience with the rules will give them a valuable perspective on dealing with new issues and problems.

STATE OF MINNESOTA
DEPARTMENT OF HEALTH

SISTER MARY MADONNA ASHTON
Commissioner of Health